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McKINNEY'S

Consolidated Laws of New York

ANNOTATED

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Consolidated Laws of New York Annotated

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THE CONSOLIDATED LAWS OF NEW YORK
ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta
3. Agricultural (*Repealed*)
— Agriculture and Markets (*See Farms and Markets*)
3a. Arbitration
4. Banking
5. Benevolent Orders
6. Business Corporations
7. Canal
7a. City Home Rule
7a. City Local Option (*Repealed*)
8. Civil Rights
9. Civil Service
9a. Condemnation
10. Conservation
10a. Co-operative Corporations
11. County
12. Debtor and Creditor
13. Decedent Estate
14. Domestic Relations
15. Drainage (*Repealed*)
16. Education
17. Election
18. Executive
18a. Farms and Markets (*Now Agriculture and Markets*)
— General Associations (*See Joint-Stock Association*)
19. General Business
20. General City
21. General Construction
22. General Corporation
22a. General Highway Traffic
23. General Municipal
24. Highway
25. Indian
26. Insanity (*Now Mental Hygiene*)
27. Insurance
28. Joint-Stock Association (*Now General Associations*)
29. Judiciary
30. Labor
31. Legislative
32. Lien
33. Liquor Tax (*Repealed*)
34. Membership Corporations
34a. Mental Deficiency (*Repealed*)
34a. Mental Hygiene
35. Military
36. Navigation
37. Negotiable Instruments
38. Partnership
39. Penal
40. Personal Property
41. Poor
42. Prison
43. Public Buildings
44. Public Health
45. Public Lands
46. Public Officers
47. Public Service Commission
47a. Public Works
48. Railroad
49. Real Property
50. Religious Corporations
51. Salt Springs
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54. State Charities
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55. State Finance
56. State
57. State Printing
58. Stock Corporation
59. Tax
60. Tenement House
61. Town
62. Transportation Corporations
63. Village
64. Workmen's Compensation
65. Unconsolidated Laws
66. Complete Table of Laws Repealed
67. General Index

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THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE
OF THE REGULAR SESSION OF
THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 42
Prison Law

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EDWARD THOMPSON COMPANY
Northport, New York
1917

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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } *ss:*

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 5th day of July, 1916.

[L. S.] FRANCIS M. HUGO,
Secretary of State.

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The annotations in this book close with the cases reported in the following volumes:

219 New York
173 Appellate Division
97 Miscellaneous
162 New York Supplement

The Supplement will cover decisions from these points.

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CONSOLIDATORS' GENERAL NOTE ON PRISON LAW

The "Prison Law" is proposed as a new law to embrace the general statutes now in existence, not incorporated in any "General Law" relating to state prisons, penitentiaries and reformatories as well as certain provisions in the Code of Civil Procedure relating to jails and jail liberties. These statutes have been consolidated with only such changes as were found to be necessary in order to combine them in the form of the consolidated laws. No change has been made in the legal effect. The term "Prison Law" is not used in a restricted sense but in the broad sense as applying to a place for the detention of persons by law whether in prisons, penitentiaries, reformatories or jails.

The report of the Board of Statutory Consolidation is dated June 26, 1907, and the Consolidated Laws were enacted in 1909. The legislation for 1908 was examined by the board and any changes that affected the laws as reported in 1907 were embodied in the laws as reported by the board to the legislature of 1909.

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PRISON LAW

LAWS 1909, CHAP. 47.

AN ACT relating to prisons, constituting chapter forty-three of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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PRISON LAW

CHAPTER 43 OF THE CONSOLIDATED LAWS

Article 1. Short title (§ 1).
2. General provisions (§§ 10–21).
3. Commission of prisons (§§ 40–53).
4. State prisons (§§ 70–74).
5. State prison for women (§§ 90–100).
6. Management of state prisons (§§ 110–160).
7. Prison labor (§§ 170–194).
8. Parcles (§§ 210–219).
9. Commutations (§§ 230–249).
10. Executive clemency (§§ 260–266).
11. Reformatories (§§ 280–308).
12. Penitentiaries (§§ 320–325).
13. Jails (§§ 340–360).
14. Care of property of person confined for life (§§ 370–375).
15. Care of property of person confined for less than life (§§ 390–401).
16. Laws repealed; when to take effect (§§ 420, 421).

ARTICLE 1

Short Title

Section 1. Short title.

§ 1. **Short title.** This chapter shall be known as "Prison Law."

"Prison" and "prisoner" defined: see PENAL LAW, § 1690. *Convict protected by law:* see PENAL LAW, § 640. *Convict voting:* see PENAL LAW, § 644. *Effect of partial invalidity of statute relating to penal institutions:* see Ann. Cas. 1916D 77, note. *Contractual capacity of convicts:* see Ann. Cas. 1916D 225, note. *Validity of conveyance by convict:* see 16 Ann. Cas. 123, note. *Service of process on convicts:* see Ann. Cas. 1916D 1207, note; 46 L. R. A. 706, note.

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ARTICLE 2

General Provisions

Section 10. Certain prison officers to administer oaths.
11. Delivery of commitment with prisoner; payment of fees for transportation.
12. Fees of sheriff for transporting convicts.
13. Rendering accounts on delivery of convicts.
14. Payment of accounts for transporting convicts.
15. Convicts sentenced at one session of court to be transported at same time.
16. State to pay expenses of trial of convicts committing crime in prison.
17. Detailed statement of expense of trial of convict for crime committed in prison made by district attorney and forwarded to comptroller.
18. Audit by comptroller and attorney-general of statement of expense of trial of convict for crime committed in prison.
19. Inquest of coroner on death of prisoner.
20. Freedom of worship.
21. Bertillon system.

§ 10. Certain prison officers to administer oaths. The superintendent of state prisons and his clerk may administer oaths and take affidavits in all matters relating to the affairs of the state prisons under his charge. The agent and warden, clerk, assistant clerk and principal keeper of each prison are authorized and required to take affidavits, in all matters of accounts against their respective prisons, and also in relation to fees of sheriffs in bringing convicts to any of said prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 65, as amended by L. 1889, ch. 382, § 1; L. 1894, ch. 465, § 1.

Oaths and affidavits generally: see General Construction Law, § 36.

§ 11. Delivery of commitment with prisoner; payment of fees for transportation. Whenever any convict shall be delivered to the agent and warden of any of said state prisons, in pursuance of such sentence, the officer so delivering such convict shall deliver

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to such agent and warden, the certified copy of the sentence received by such officer from the clerk of the court by which such convict shall have been sentenced, and such agent and warden shall deliver to such officer a certificate of the delivery of such convict, and the fees of such officer for transporting such convict shall be paid by the treasurer upon the warrant of the comptroller.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 71, as amended by L. 1889, ch. 382, § 1.

Privilege of officers and prisoner from arrest while passing through another country: see CIVIL RIGHTS LAW, § 22.

Cited.— This section was cited in People v. Howard, (1912) 152 App. Div. 621, 137 N. Y. S. 496.

It was cited in Op. Atty.-Gen. (1910) 539, in connection with the construction of section 240 of the County Law.

§ 12. Fees of sheriff for transporting convicts. The compensation to sheriffs for conveying one convict to a state prison from the county prison, for each mile actually traveled, shall be twenty cents; for conveying two convicts, for each mile so traveled, thirty-five cents; for conveying three convicts, for each mile so traveled, forty cents; and for conveying four or more convicts, for each mile so traveled, twelve cents each; with one dollar per day for the maintenance of each convict while on the way to a state prison but not exceeding one dollar for every thirty miles of travel, in full of all charges and expenses in the premises.

This section was derived from L. 1877, ch. 128, § 1 pt.

Provisions relating to transportation of convicts to penitentiaries is now covered by section 322.

Cited.—This section was cited in Op. Atty.-Gen. (1910) 539, in connection with the construction of section 240 of the County Law.

§ 13. Rendering accounts on delivery of convicts. On the delivery of any such convicts to the agent and warden of such prison, the sheriff or other person having charge of the same, shall make and render to the agent and warden of the prison, an account of the number of days spent in coming, and the estimated time necessary in returning home, the number of miles traveled, and of the amount due therefor as prescribed by the preceding section; which account shall then by him be certified under oath to be correct, to which shall be added the certificate of the agent and warden of such prison, setting forth the number of convicts so delivered, and the distance from such prison to the place of their conviction.

This section was derived from L. 1847, ch. 497, § 3.

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Application of section.— The present section applies only to convicts adjudged to be such by a court of record, and not to juvenile delinquents sentenced by a magistrate or justice of the peace. People v. Board of Auditors, (1896) 16 Misc. 92, 37 N. Y. S. 633.

Cited.—This section was cited in Op. Atty.-Gen. (1910) 539, in connection with the construction of section 240 of the County Law.

§ 14. Payment of accounts for transporting convicts. The account, certified and attested as provided in the preceding section, shall be audited by the comptroller, and paid out of the treasury, unless otherwise provided.

This section was derived from L. 1847, ch. 497, § 4.

§ 15. Convicts sentenced at one session of court to be transported at same time. All the convicts who shall be sentenced to imprisonment in the same state prison, at one session of a criminal court, shall be transported at the same time, unless said court shall expressly direct otherwise.

This section was derived from L. 1847, ch. 497, § 5.

§ 16. State to pay expenses of trial of convicts committing crime in prison. Whenever any convict in any of the state prisons of this state shall be indicted and tried for any offense committed by such convict during the time of his imprisonment in any state prison in this state, the expenses of such trial, and in case of conviction for murder in the first degree, the expenses of executing the judgment or sentence of the court, shall be paid by the state.

This section was derived from L. 1882, ch. 389, § 1.

Expenses of trial of convicts' crimes committed in reformatories is covered by section 308.

Right to try person convicted of another offense: see 41 L. R. A. (N. S.) 1095, note. *Liability of person serving life sentence to trial and sentence for murder:* see 14 Ann. Cas. 488 note. *Habeas corpus to bring convict before court of trial:* see 4 Ann. Cas. 723. *Right of convict to speedy trial:* see 17 Ann. Cas. 170, note; L. R. A. 1915E 363, note.

Cited.—The statute embodying the present section was cited in Cayuga County v. State, (1897) 153 N. Y. 279, 47 N. E. 288, in connection with the construction of chapter 428 of the Laws of 1885, authorizing the board of claims to audit the claim of Cayuga County for moneys expended in the trial of convicts in the Auburn State prison for crimes committed in the prison.

§ 17. Detailed statement of expense of trial of convict for crime committed in prison made by district attorney and forwarded to comptroller. It shall be the duty of the district attorney of any county in which such convict shall be indicted and tried to

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make out a detailed statement under oath of all the necessary expenses incurred by any such trial, including the expenses of procuring witnesses to attend before the grand jury and at the trial of the indictment, and also the amount which shall or may be paid for petit jurors for and during the time occupied by such trial, and forward the same to the comptroller of the state of New York.

This section was derived from L. 1882, ch. 389, § 2.

§ 18. Audit by comptroller and attorney-general of statement of expense of trial of convict for crime committed in prison. It shall be the duty of the comptroller and attorney-general to examine such statement and to correct the same by striking therefrom any and all items which are not intended to be paid by the provisions of this section and the two preceding sections of this article, and after correcting such statement as aforesaid, the comptroller shall draw his draft upon the treasurer for the amount of such expenses in favor of the county treasurer of the county in which such trial and indictment shall be had, which sum shall be paid to said county treasurer out of any moneys in the treasury not otherwise appropriated.

This section was derived from L. 1882, ch. 389, § 3.

§ 19. Inquest of coroner on death of prisoner. Whenever a prisoner shall die in any state prison, it shall be the duty of the superintendent of state prisons, and of the agent and warden, physician and chaplain of the prison, if they or either of them shall have reason to believe that the death of the prisoner arose from any other cause than ordinary sickness, to call upon the coroner having jurisdiction to hold an inquest upon the body of such deceased prisoner.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 91, as amended by L. 1889, ch. 382, § 1.

§ 20. Freedom of worship. All persons who may have been or may hereafter be committed to or taken charge of by any of the institutions mentioned in this section, are hereby declared to be and entitled to the free exercise and enjoyment of religious profession and worship, without discrimination or preference.

This section shall be deemed to apply to every incorporated or

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unincorporated society for the reformation of its inmates, as well as houses of refuge, penitentiaries, protectories, reformatories or other penal institutions, continuing to receive for its use, either public moneys, or a per capita sum from any municipality for the support of inmates.

The rules and regulations established for the government of the institutions mentioned in this section shall recognize the right of the inmates to the free exercise of their religious belief, and to worship God according to the dictates of their consciences, in accordance with the provisions of the constitution; and shall allow religious services on Sunday and for private ministration to the inmates in such manner as may best carry into effect the spirit and intent of this section and be consistent with the proper discipline and management of the institution; and the inmates of such institutions shall be allowed such religious services and spiritual advice and spiritual ministration from some recognized clergyman of the denomination or church which said inmates may respectively prefer or to which they may have belonged prior to their being confined in such institutions; but if any of such inmates shall be minors under the age of sixteen years, then such services, advice and spiritual ministration shall be allowed in accordance with the methods and rites of the particular denomination or church which the parents or guardians of such minors may select; such services to be had and such advice and ministration to be given within the buildings or grounds where the inmates are required by law to be confined, in such manner and at such hours as will be in harmony, as aforesaid, with the discipline and the rules and regulations of the institution and secure to such inmates free exercise of their religious beliefs in accordance with the provisions of this section. In case of a violation of any of the provisions of this section any person feeling himself aggrieved thereby may institute proceedings in the supreme court of the district where such institution is situated, which is hereby authorized and empowered to enforce the provisions of this section.

This section was derived from L. 1892, ch. 396, §§ 1–3.
Religious liberty: see CONSTITUTION, Art. I, § 3.

§ 21. Bertillon and finger print system. The superintendent of state prisons shall cause the prisoners in the state prisons to

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be measured and described in accordance with the system commonly known as the Bertillon method for identification of criminals, [1]and to have impressions made of the fingers and thumbs of such prisoners. The said superintendent shall cause such measurements and impressions to be made by a person or persons in official service of the state, in conformity with the system now in use in the prison department of this state,[2] and shall prescribe rules and regulations for keeping accurate records of such measurements and impressions[3] at such prisons and in duplicate at his office in Albany and for classifying and indexing the same. It shall also be the duty of the officials having charge of the New York state reformatory at Elmira, and the Eastern New York reformatory at Napanoch, and of the penitentiaries in which prisoners shall be confined, or shall be hereafter received under sentence for felony[4] to cause said prisoners and such other classes of prisoners received under sentence for misdemeanors as the superintendent of state prisons may direct[5] to be measured and described in accordance with said Bertillon system, and the finger print impressions of such prisoners made,[6] by such person or persons in the official service of the state or of any such county or institution as may be designated by the superintendent of state prisons for the purpose, which measurements and impressions[3] shall be made according to the rules and methods prescribed by the superintendent of state prisons. And it shall be the duty of the officials in charge of such reformatories and penitentiaries to cause duplicate records of such measurements and impressions[3] to be transmitted to the superintendent of state prisons to be by him indexed and classified according to said Bertillon and finger print[7] system. [8]If at any time the files in which the records herein provided for are filed become congested, the superintendent of state prisons may remove from the active files the records of such number of misdemeanants convicted of minor offenses as he may deem necessary.

[1] Remainder of sentence new.
[2] Words "in conformity with the system . . . of this state," new.
[3] Words "and impressions" new.
[4] Words "for felony" substituted for words "of thirty days or more."
[5] Words "and such other classes . . . may direct," new.
[6] Words "and the finger print impressions of such prisoners made," new.
[7] Words "and finger print" new.
[8] Following sentence new.

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The superintendent of state prisons is also authorized to file, index and classify Bertillon descriptive cards and finger prints[1] received from other sources. The necessary expenses incurred by the superintendent of state prisons in indexing and classifying prisoners, as provided in this section, shall, unless otherwise provided, be payable by the treasurer from the moneys appropriated for the maintenance and support of the several state prisons, on the warrant of the comptroller, and on bills approved by the superintendent of state prisons, but such expenses shall not exceed ten thousand dollars[2] per year.

This section was derived from: first paragraph, L. 1896, ch. 440, § 1, as amended by L. 1900, ch. 498, § 1; second paragraph L. 1896, ch. 440, § 2, as amended by L. 1900, ch. 498, § 2; L. 1902, ch. 204, § 1, and L. 1905, ch. 536, § 1. It was amended to read as above by L. 1912, ch. 106, § 1, and L. 1913, ch. 501, § 1. The amendment by L. 1912, ch. 106, § 1, affected the second paragraph only by adding the words "unless otherwise provided for," in the second sentence and by increasing the amount limited for expenses from five thousand dollars to seven thousand dollars. The amendments by L. 1913, ch. 501, § 1, are shown in the footnotes.

Return of photographs of prisoners after unsuccessful prosecution of criminal action: see PENAL LAW, § 516.

Law of finger prints: see Ann. Cas. 1917A 417, note. *Finger prints as evidence:* see 43 L. R. A. (N. S.) 1206, note. *Right to photograph person accused of crime:* see 8 Ann. Cas. 1176, note; 16 Ann. Cas. 1125, note; 7 L. R. A. (N. S.) 274, note; 23 L. R. A. (N. S.) 739, note.

Right to surrender of measurements on subsequent acquittal.—Where measurements of a convict are made and recorded as provided in the present section they constitute public records, and the fact that upon a subsequent trial the convict is acquitted does not entitle him to mandamus to compel the superintendent of prisons to remove the records and deliver them to him. The legislature alone can grant such relief. Matter of Molineux, (1904) 177 N. Y. 395, 69 N. E. 727, 65 L. R. A. 104, affirming 88 App. Div. 618, 84 N. Y. S. 1136, which affirmed 41 Misc. 154, 83 N. Y. S. 943.

See also in this connection People v. Bingham, (1907) 57 Misc. 66, 107 N. Y. S. 1011.

Cited.— This section was cited in Bingham v. Gaynor, (1910) 141 App. Div. 301, 307, 126 N. Y. S. 353, affirmed (1911) 203 N. Y. 27.

[1] Words "and finger prints" new.

[2] Formerly "seven thousand dollars."

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ARTICLE 3

Commission of Prisons

Section 40. State commission of prisons; appointment and terms.
41. Officers of the commission.
42. Compensation and expenses of commissioners.
43. Meetings and effect of non-attendance.
44. Office room and supplies.
45. Official seal, certificate and subpœnas.
46. General powers and duties of commission.
47. Visitation and inspection of institutions.
48. Orders of the commission directed to institutions or officers in charge thereof.
49. Reports of commission.
50. Reports of prison officers.
51. Estimates to be furnished by certain officers.
52. Enforcement of rights and powers of commission; duties of the attorney-general and district attorneys.
53. Misdemeanor.

§ 40. State commission of prisons; appointment and terms. There shall continue to be a state commission of prisons, composed of seven members, who shall be appointed by the governor, by and with the advice and consent of the senate. They shall be known as commissioners of prisons, and, except as herein otherwise provided, shall hold office for four years and until the appointment and qualification of their respective successors. In case of any vacancy in the office of any commissioner, the appointment shall be for the remainder of the unexpired term. No commissioner shall qualify or enter upon the duties of his office, or remain therein, while he is the superintendent of state prisons or the superintendent, manager, agent and warden or other administrative officer of one or more of the institutions subject to the visitation and inspection of such commission.

This section was derived from L. 1907, ch. 381, § 1.

Legislature to provide for state commission of prisons: see CONSTITUTION, Art. VIII, § 11.

Governor to appoint commission: see CONSTITUTION, art. VIII, § 12.

§ 41. Officers of the commission. The commission may elect a president and vice-president from its own members, and appoint

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a secretary who shall perform such duties as may be required of him. He shall receive a salary to be fixed by the commission at not to exceed three thousand dollars per annum and hold office during the pleasure of the commission. The commission may likewise appoint such other officers, inspectors and clerks as may be necessary, for which an appropriation shall have been made, and fix their compensation, within any appropriation so made, and they shall hold their office during the pleasure of the commission.

This section was derived from L. 1907, ch. 381, § 2.

§ 42. Compensation and expenses of commissioners. Each commissioner shall be entitled to receive ten dollars for each day's attendance at meetings of the commission, or of any of its committees, not exceeding in any one year the sum of five hundred dollars, and also to his actual expenses, necessarily incurred while engaged in the performance of the duties of his office.

This section was derived from L. 1907, ch. 381, § 3.

§ 43. Meetings and effect of non-attendance. The commission may adopt rules and regulations for the discharge of its functions and defining the duties of its officers. It shall, by rule, provide for holding stated and special meetings, which meetings shall however be held at least as often as once each month. Four members regularly convened shall constitute a quorum. The failure on the part of any commissioner to attend three consecutive meetings of the commission during any calendar year, unless excused by a formal vote of the commission, shall be treated by the governor as a resignation by such non-attending commissioner and the governor shall appoint his successor. The annual reports of the commission shall give the names of the commissioners present at each meeting.

This section was derived from L. 1907, ch. 381, § 4.
Quorum generally: see GENERAL CONSTRUCTION LAW, § 41.

§ 44. Office room and supplies. The trustees of public buildings shall furnish and assign to such commission, in the capitol at Albany, suitably furnished rooms for its office and place of holding meetings, and the comptroller shall furnish it with all necessary journals, account books, blanks and stationery.

This section was derived from L. 1907, ch. 381, § 5.

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§ 45. Official seal, certificates and subpœnas. The commission shall cause a record to be kept of its proceedings, and it shall have and use an official seal; and the records of its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of its president or secretary. In making investigations as herein authorized said commission or any member thereof is hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths and to examine persons under oath.

This section was derived from L. 1907, ch. 381, § 6.

Cited.—This section was cited in People v. Osborne, (1916) 158 N. Y. S. 572.

Seal of public officer: see GENERAL CONSTRUCTION LAW, § 43.

§ 46. General powers and duties of commission. The state commission of prisons shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors, excepting such reformatories as are subject to the visitation and inspection of the state board of charities; and shall:

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions or in control thereof in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions, and approve or reject plans for their construction or improvement.

4. Investigate the management of all institutions made subject to the visitation of the commission, and the conduct and efficiency of the officers or persons charged with their management.

5. Secure the best sanitary conditions of the buildings and grounds of all such institutions, and protect and preserve the health of the inmates.

6. Collect statistical information in respect to the property, receipts and expenditures of said institutions and of any department of the state or any subdivision thereof in charge of the same, and the number and condition of the inmates thereof.

7. Ascertain and recommend such system of employing said inmates as may, in the opinion of said commission, be for the best

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interest of the public and of said inmates and not in conflict with the provisions of the constitution relating to the employment of prisoners.

8. Close any city jail or police station, town or village jail or lockup which is unsanitary or inadequate to provide for the separation and classification of prisoners required by law. The powers and duties of the commission under this subdivision shall be exercised in the following manner: The commission shall cause a citation to be mailed to the mayor and the city clerk, in the case of a city jail or police station; to the supervisor and town clerk, in the case of a town jail or lockup, and to a trustee and village clerk, in the case of a village jail or lockup, at least twenty days before the return day thereof, directing the authorities of the city, town or village designated to appear before such commission at the time and place set forth in the citation, and show cause why such city jail or police station, or town jail or lockup, or village jail or lockup, shall not be closed. After a hearing thereon or upon the failure to appear, such commission is empowered to order the city jail or police station, town jail or lockup, village jail or lockup designated in the citation closed within ninety days, during which time the city, town or village may review such order by writ of certiorari, in the supreme court. Ninety days after the order to close has been served by registered letter upon the mayor and city clerk, in case of a city jail or police station, upon the supervisor and town clerk, in case of a town jail or lockup, and upon a village trustee and clerk in case of a village jail or lockup, if no court review has been taken, and ninety days after the order of such commission has been confirmed by the court, in case of court review, the city jail or police station, town jail or lockup and village jail or lockup designated in the order shall be closed, and it shall be unlawful to confine or detain any person therein and any officer confining or detaining any person therein shall be guilty of a misdemeanor.

This section was derived from L. 1907, ch. 381, § 7. It was amended to read as above by L. 1914, ch. 379, § 1. The amendment added subdivision 8.

Constitutional provision as to inspection of institutions: see CONSTITUTION, Art. VIII, § 11.

Prison officers not to be interested in certain contracts: see PENAL LAW, § 1828.

Power of commission to require report from superintendent of prisons.—The state commission of prisons may collect of the superintendent of state prisons such information as he may have concerning state prisons, but may

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not require him to make reports to the commission with his suggestions as to what, if any, additions should be made to industries connected with the prisons. Op. Atty.-Gen. (1912) 282.

Approval of plans for buildings not used by inmates.— Plans for buildings such as residence of warden or keeper, and farm buildings used in connection with prisons, but not used for inmates, need not be approved by the commission. Op. Atty.-Gen. (1910) 608.

New York City Reformatory at Hart's Island as under supervision of commission.— Plans for the erection of a building as part of the New York City Reformatory at Hart's Island are subject to the approval of the prison commission before they may be carried out. Op. Atty.-Gen. (1910) 748.

Cited.— This section was cited in In re State Commission of Prisons, (1916) 173 App. Div. 913, 162 N. Y. S. 363.

It was cited in People v. Osborne, (1916) 158 N. Y. S. 330, in connection with the construction of section 47. See infra, § 47 note.

§ 47. Visitation and inspection of institutions. The institutions subject to the visitations of said commission may be visited and inspected by it or by any member thereof or by its secretary, when authorized, or by any officer or inspector duly appointed by it for that purpose, at any and all times. Such commission or any member thereof may take proof and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection. Any member or the secretary of such commission, when authorized, or any officer or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge or control thereof any information he may deem necessary in the discharge of his duties. Said commission may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the commission. Any superintendent, commissioner, officer or employee of such institution, or in charge or control thereof, who shall refuse or cause admission to be refused to any member, officer or inspector of the commission, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish, or to cause to be furnished, the information required by the commission or by any of its members, officers or inspectors, shall be guilty of a misdemeanor.

This section was derived from L. 1907, ch. 381, § 8.

Constitutional provision as to visitation and inspection: see CONSTITUTION, art. VIII, § 11.

Unlawful visitation of state prison; see PENAL LAW, § 1691.

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Visitation by single member of commission.— It was the obvious intent of the statute to vest the power of visitation and inspection in the commission of prisons as a body, and not to give an individual member that power. A single member of the commission may not, therefore, make an official visitation and inspection unless authorized by the commission. People v. Osborne, (1916) 158 N. Y. S. 330.

§ 48. Orders of the commission directed to institutions or officers in charge thereof. If it shall appear, after any such investigation, that the laws relating to the construction, management and affairs of any such institution and the care, treatment and discipline of its inmates, are being violated, or that inmates of any such institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision or other condition necessary to their suitable and proper well being, said board may apply for an order of the supreme court, directed to the proper superintendent, commissioner, agent and warden, manager, keeper or other officer of such institution or in control thereof, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. The application for such order shall be made as prescribed in section fifty-two of this chapter and the court may thereupon make such order as may be just; a failure to comply with the terms of such order shall be a contempt of court and punishable as such. Any person to whom such an order is directed who shall wilfully refuse to obey the same, shall likewise, upon conviction, be adjudged guilty of a misdemeanor.

This section was derived from L. 1907, ch. 381, § 9.

§ 49. Reports of commission. The state commission of prisons shall annually report to the legislature, in January of each year, its acts and proceedings for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and such other matters relating to the institutions subject to its visitations as it may deem necessary or proper. It may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

This section was derived from L. 1907, ch. 381, § 10.

§ 50. Reports of prison officers. The agent and warden of every prison, the superintendent or manager of every penitentiary, the keeper of every jail or other institution used for the

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detention of sane adults charged with or convicted of crime or detained as witnesses or debtors, subject to the visitation of the commission, shall, besides such information as may from time to time be required of him by the state commission of prisons pursuant to the powers hereinbefore conferred, on or before the first day of August in each and every year, report to said commission the number of male and female persons charged with crime and awaiting trial, the number convicted of crime, the number detained as witnesses and as debtors in his custody on the first day of July last past, together with a statistical exhibit of the number of admissions, discharges and deaths which have occurred within the past year, the nature of the charge, the period of detention or sentence, and such other facts and information as the commission may require.

This section was derived from L. 1907, ch. 381, § 11. It was amended to read as above by L. 1916, ch. 118, § 21. The amendment changed the months in which required reports are to be made from November to August, and from October to July.

§ 51. Estimates to be furnished by certain officers. The said commission shall have the further duty and authority to require the proper officials of the state and the political divisions thereof, and of all public institutions of the state, and political divisions thereof, supported wholly or in part by the state, or any political division thereof, to furnish to said commission, annually, estimates for each ensuing year of the articles which may be manufactured in penal institutions, required for the use of the state or such political divisions, or said institutions in their charge or under their management.

This section was derived from L. 1907, ch. 381, § 12.

§ 52. Enforcement of rights and powers of commission; duties of the attorney-general and district attorneys. The rights and powers conferred by this article upon the state commission of prisons, its members, officers and inspectors and each of them, may be enforced by an order of the supreme court, or by indictment by the grand jury of the county, or both. The application for such order shall be to a special term of the supreme court of the judicial district in which the institution complained of is situated after at least twenty days' notice to the officer or board

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having charge of such insitution, of the time and place of making such application. A copy of all the papers upon which the application is based shall be served with the notice of such application. On such hearing the court may make such order as may be just, and a failure to comply with the terms thereof shall be a contempt of court and punishable as such. If, in the opinion of the commission, any matter in regard to the management or affairs of any such institution, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the commission, to the attorney-general, or to the district attorney of the county, or both, and he or they shall thereupon make inquiry and take such proceeding in the premises as he or they may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the commission may require in the discharge of its duties.

This section was derived from L. 1907, ch. 381, § 13.

§ 53. **Misdemeanor.** Except as in this article otherwise expressly provided, any person who wilfully violates any of the provisions of this article shall be guilty of a misdemeanor.

This section was derived from L. 1907, ch. 381, § 14.

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ARTICLE 4

State Prisons

Section 70. Names and locations of state prisons.
71. Clinton prison water-works.
72. Lands retained for use of Clinton prison.
73. Southern boundary of lands at Clinton prison.
74. Sing Sing prison farm.

§ 70. Names and locations of state prisons. There shall continue to be maintained for the security and reformation of convicts in this state, three state prisons for men: one at Ossining, in Westchester county; one at Auburn, in Cayuga county; and one at Dannemora, in Clinton county, which prisons shall respectively be denominated the Sing Sing Prison, the Auburn Prison and the Clinton Prison. The prison for women, located on the grounds of Auburn Prison, and provided for by article five of this chapter, shall continue to be maintained and to be known as the State Prison for Women. No state prison shall hereafter be located within the boundaries of any city.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 29, as amended by L. 1889, ch. 382, § 1. It was amended to read as above by L. 1909, ch. 479. This amendment added the last sentence.

Matteawan State Hospital for Insane Criminals: see Insanity Law, § 130 et seq.

Dannemora State Hospital for Insane Convicts: see Insanity Law, § 150 et seq.

Place of imprisonment to be specified in sentence: see Penal Law, § 2180.

Sentence of convicts to state prisons: see Penal Law, § 2198.

§ 71. Clinton prison water-works. The agent and warden of the Clinton prison is authorized to appropriate to the use thereof, all waters upon the tract purchased for the establishment of said prison; and any person claiming damages in consequences of such appropriation of water, shall, within six months thereafter, make application to the county judge of the county of Clinton, who shall appoint three commissioners not interested in lands through which the stream or streams of water so appropriated may have previously run, who shall personally examine the lands of the applicant and make an estimate of the damages he has sustained by reason of such appropriation of water, which estimate shall be reduced to writing, subscribed and sworn to by said commissioners, and then transmitted to the comptroller of this state, who

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shall thereupon pay the estimated damages of the applicant out of the funds appropriated for said prison.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 66, as amended by L. 1889, ch. 382, § 1.

§ 72. Lands retained for use of Clinton prison. All lands belonging to the state of New York, or which may hereafter become the property of said state, and which shall be situated within ten miles of the Clinton prison, shall be withdrawn from sale, and shall be retained by the state for the use of said prison and the Dannemora hospital for insane convicts. The superintendent of state prisons shall designate the portion of said lands to be used by each institution. Lots in the towns of Altona and Dannemora which are partly within and partly without such ten mile limit are expected from the foregoing provisions of this section and may be sold by the state.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 67, as amended by L. 1889, ch. 382, § 1, as amended by L. 1894, ch. 208, § 1; L. 1897, ch. 216, § 1; L. 1904, ch. 323, § 1. It was amended to read as above by L. 1914, ch. 488, § 1.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 507; Op. Atty.-Gen. (1909) 806, in connection with the construction of section 1 of chapter 374 of the Laws of 1880, conferring authority upon the warden of Clinton prison to make contracts for the sale of timber on prison lands.

The statute embodying the amendment of 1894 to the present section (L. 1894, ch. 208) was cited in Wheeler v. State, (1904) 97 App. Div. 276, 90 N. Y. S. 18.

§ 73. Southern boundary of lands at Clinton prison. The southerly bounds of the two hundred acres of land conveyed to the state of New York by St. John B. L. Skinner and others, in eighteen hundred and forty-four, for a prison site at Dannemora, is fixed and determined as and at the center of Cook street in the said village of Dannemora, and it is hereby declared that the said two hundred acres do not extend, and the state has no right or title, south of the said center of Cook street aforesaid.

This section was derived from L. 1871, ch. 457, § 1.

§ 74. Sing Sing prison farm. The agent and warden of the Sing Sing prison shall continue to have charge of the farm and premises on which the same is situated and it shall be his duty to rent or otherwise use or improve the same to the best advantage of the state, but no lease shall be made by him for a longer term than three years.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 68, as amended by L. 1889, ch. 382, § 1.

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ARTICLE 5

State Prison for Women

Section
90. Establishment.
91. Agent and warden.
92. Matron, assistant matrons, guards and store-keeper.
93. Residence and maintenance of matron.
94. Salaries.
95. Physician and chaplain. [*Title as inserted by editors.*]
96. Bond of store-keeper.
97. Commitment of women; notice; transportation; attendants.
98. Children of women convicts.
99. Department of Auburn prison.
100. Separate accounts and records.

§ 90. Establishment. The buildings on the prison grounds at Auburn, recently known as the asylum for insane criminals, shall be known and designated as a "state prison for women," and shall be maintained as such for the security and reformation of women convicts in this state.

This section was derived from L. 1893, ch. 306, § 1.

§ 91. Agent and warden. The agent and warden of Auburn prison, under the direction of the superintendent of state prisons, shall have the like management and control of the state prison for women and the inmates thereof that is now conferred upon him by law over the Auburn prison and the prisoners confined therein.

This section was derived from L. 1893, ch. 306, § 2.

§ 92. Matron, assistant matrons, guards and store-keeper. The superintendent of state prisons shall appoint a matron of said state prison for women, and he may remove her from office whenever, in his judgment, the public interest shall so require. He shall designate such number of assistant matrons, not exceeding one for each twenty prisoners, and such number of guards not exceeding four, as he shall deem necessary for the safekeeping

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and improvement of the prisoners and the maintenance of discipline. Such assistant matrons and guards shall be appointed by the agent and warden of the Auburn prison, with the approval of the superintendent of state prisons. The agent and warden shall also have power to remove the assistant matrons, guards and other employees so appointed by him. Such agent and warden shall appoint a store-keeper of said prison, who shall have charge of the stores and perform the like duties in the said prison for women that are now performed by the store-keeper in the Auburn prison, and also such other duties as the agent and warden may direct.

This section was derived from L. 1893, ch. 306, § 3 and § 4 pt.

§ 93. Residence and maintenance of matron. The matron shall be allowed rations for herself from the prison stores, and shall reside in the house connected with the said prison for women, and shall be provided with proper furniture, fuel and lights.

This section was derived from L. 1893, ch. 306, § 5.

§ 94. Salaries. The salary of the matron shall be fixed by the superintendent of state prisons, but shall not exceed twelve hundred dollars per annum. Each assistant matron shall board and lodge in the state prison and shall receive as compensation, in addition to such board and lodging, not to exceed the sum of four hundred and twenty dollars[1] per annum. The storekeeper shall receive a salary not to exceed one thousand dollars per annum. [2]Guards including those now in office shall receive annual salaries at the following rates: For the first year's service, six hundred and sixty dollars; for the second year's service, seven hundred and forty dollars; for the third year's service, eight hundred and twenty dollars; and thereafter, nine hundred dollars. Such salaries shall be paid monthly and if not fixed by this section[3] shall be fixed and rated by the superintendent of state prisons.

This section was derived from L. 1893, ch. 306, §§ 4 pt., 6. It was amended to read as above by L. 1912, ch. 105. The amendments are shown in the footnotes.

[1] Formerly "three hundred dollars."
[2] Following sentence formerly read: "Each guard shall receive a salary not to exceed annually six hundred dollars."
[3] Words "if not fixed by this section," new.

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§ 95. * Physician and chaplain. The physician and chaplain respectively of Auburn prison shall be the physician and chaplain of said state prison for women, and shall perform the duties appertaining to said respective offices thereat, and three hundred dollars additional annual compensation shall be allowed and paid to each of them for the same.

This section was derived from L. 1893, ch. 306, § 7. It was amended to read as above by L. 1909, ch. 527. The section formerly provided that the services of the physician and chaplain performed at the prison for women should be without additional compensation.

§ 96. Bond of store-keeper. The store-keeper of said prison shall, before entering on the duties of his office, execute and file in the office of the comptroller of this state, a bond to the people of the state of New York, with sufficient sureties to be approved by the superintendent of state prisons, in the penal sum of twenty-five hundred dollars, conditioned for the faithful performance of his duties according to law.

This section was derived from L. 1893, ch. 306, § 8.

§ 97. Commitment of women; notice; transportation; attendants. Any woman over the age of sixteen years who shall be convicted of felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women except as provided by section twenty-one hundred and eighty-seven of the penal law. The clerk of the court imposing such sentence shall immediately notify the agent and warden of the Auburn prison thereof, and such agent and warden shall cause such convict to be transported in the company of at least one other woman to such state prison for women, and the expenses of such transportation shall be paid as a part of the expenses of the maintenance of the prison.

This section was derived from L. 1893, ch. 306, § 9. It was amended to read as above by L. 1909, ch. 240, § 62. The amendment added to the first sentence the words "except . . . of the penal law."

Sentence of female convicts to imprisonment: see PENAL LAW, § 2187.

Commitment of women convicted of capital crime.— The provisions of this section apply only to a felony, where in case of conviction the sentence is one year or more; it does not apply to a felony which is punishable by death. The commitment of a woman found guilty of a felony which is punishable by death must be governed by section 491 of the Code of Criminal Procedure. Op. Atty.-Gen. (1908) 462.

*As enacted this section was without heading. The above heading was inserted by the editors of the official edition of the Consolidated Laws.

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Removal of woman felon from county penitentiary.—Section 10 of chapter 306 of the Laws of 1893, prescribed sixty days as the time within which all women prisoners should be removed from county penitentiaries to the prison for women at Auburn. It was held in Op. Atty.-Gen. (1899) 360, that this provision was directory only, and that a women felon might be thus removed after the expiration of the sixty days.

Cited.—This section was cited in Op. Atty.-Gen. (1909) 813, in connection with the construction of section 243. See infra, § 243 note.

§ 98. Children of women convicts. If any woman committed to any state prison, at the time of such commitment is a mother of a nursing child in her care under one year of age, or if a child shall be born to any woman after such commitment to a state prison such child may accompany its mother to and remain in such institution until it is two years of age, and must then be removed therefrom, unless the term of imprisonment of such woman will expire within two years from the time said child thus reaches two years of age. The agent and warden, superintendent or officer in charge of any state prison, shall cause such child when he attains the age of two years to be placed in an asylum for children in this state or may commit such child to the care and custody of some relative or proper person willing to assume such care. If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the justice or magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.

This section was derived from L. 1904, ch. 547, § 1.

§ 99. Department of Auburn prison. For the purposes of the government and management of such state prison for women, other than as provided for by this article, such state prison for women shall be deemed a department of the Auburn prison.

This section was derived from L. 1893, ch. 306, § 12.

§ 100. Separate accounts and records. The accounts and records of the state prison for women shall be kept separate and distinct from those of the Auburn prison.

This section was derived from L. 1893, ch. 306, § 13.

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ARTICLE 6

Management of State Prisons

Section 110. Officers and employees of prisons.
111. Salary and expenses of superintendent.
112. Salary and expenses of agent and warden.
113. Salaries of physicians, clerks and chaplains.
114. Compensation of other officers.
115. Salaries to be paid monthly.
116. Oath of office and bond of superintendent.
117. Oaths of other officers.
118. Bond of agent and warden.
119. Bonds of other officers.
120. Office, powers and duties of superintendent.
121. Annual report of superintendent.
122. Powers and duties of agent and warden.
123. Daily journal.
124. Account books.
125. Deposit of convicts' deposits and earnings.
126. Estimate of expenses; revision by comptroller.
127. *Monthly financial statement of agent and warden to comptroller.
128. Monthly report as to inmates.
129. Annual financial report.
130. Annual inventory.
131. Agent and warden to control fiscal transactions; recovery of debts to prison.
132. Agent and warden to purchase supplies.
133. Bills and receipts for supplies and services.
134. Convicts' money and other property; what to be furnished them on their release.
135. Neglect of duty by agent and warden, punishable.
136. General duties of clerk.
137. Duties of assistant clerk and of assistant foreman of construction at Clinton prison.
138. Duties of physician.
139. Duties of chaplain.

* So in original. The section head reads "Monthly statement of financial agent and warden to comptroller."

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Section 140. Duties of principal keeper.
141. Duties of store-keeper.
142. Duties of kitchen-keeper.
143. Notes, drafts and other evidences of debt not to be given.
144. Imprisonment of convict sentenced to death and commuted by governor.
145. Transfer from one prison to another.
146. Escaped prisoners, reward for; increased imprisonment because of escape.
147. Agent and warden to report as to prisoner believed insane when crime was committed.
148. Prisoners, how graded.
149. Promotions and reductions in grade.
150. Prison instruction.
151. Single cells.
152. Clothing, bedding and food of prisoners.
153. Prison punishment.
154. Solitary confinement on short rations.
155. Contagious disease in prison.
156. Fire in prison.
157. Imprisonment of criminals convicted of crime against the United States.
158. Restrictions on imprisonment of United States prisoners.
159. Penalty for neglect or violation of duty as to United States prisoners.
160. Persons authorized to visit prisons.

§ 110. Officers and employees of prisons. The superintendent of state prisons shall appoint the agent and warden, physician, and chaplain of each of the said prisons, as provided in the constitution; and he may remove them from office whenever in his judgment the public interests shall so require. He shall designate such number of guards, teachers and other employees at each of said prisons as he may deem necessary for the safe-keeping and improvement of the prisoners or for the maintenance of discipline, and he shall also designate which of them shall reside at the prison. But the number of guards shall not exceed the proportion of one guard to fourteen prisoners at each of said prisons.

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1. The comptroller shall appoint a clerk of each of said prisons as provided by the constitution, and is authorized to appoint an assistant clerk of each of said prisons whenever in his judgment the public interests shall so require.

2. The agent and warden of each of said prisons shall appoint, subject to the approval of the superintendent of state prisons, a principal keeper, a store-keeper, a kitchen-keeper, a hall-keeper, a yard-keeper, a sergeant of the guard, and so many other guards, teachers and employees of such prison as shall be designated by the superintendent of state prisons as aforesaid, and such agent and warden shall have the power to remove such subordinate officers and employees so appointed by him.

3. No appointment shall be made in any of the state prisons of this state on the grounds of political partisanship; but honesty, capacity and adaptation shall constitute the rule for appointments, and any violation of this rule shall be sufficient cause for the removal from office of the officer committing such violation. No person under twenty-one years of age shall be appointed to or hold any office at any state prison, nor shall any subordinate officer be appointed at any of said prisons by the agent and warden unless such subordinate officer is a citizen of this state.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 30, as amended by L. 1889, ch. 382, § 1; L. 1904, ch. 709, § 1.

Powers and duties of agent and warden: see infra, § 122.

General duties of clerk: see infra, § 136.

Duties of physician: see infra, § 138.

Duties of chaplain: see infra, § 139.

Prison instruction: see infra, § 150.

Appointment and removal of superintendent of state prisons: see CONSTITUTION, Art. V, § 4.

To whom superintendent may resign: see PUBLIC OFFICERS LAW, § 31, subd. 2.

Appointment of agents, wardens, physicians and chaplains by superintendent: see CONSTITUTION, Art. V, § 4.

Agent and warden to appoint certain officers of each prison: see CONSTITUTION, Art. V, § 4.

Appointment of clerk: see CONSTITUTION, Art. V, § 4.

Exemption of prison officers from military duty: see MILITARY LAW, § 1.

From jury duty: see JUDICIARY LAW, §§ 503, 546.

Supervision of warden.— While the superintendent of prisons has power to appoint an agent and warden and to remove him, he has no authority to suspend him, and the officer attempted to be illegally suspended is entitled to his full salary until he is actually removed. Op. Atty.-Gen. (1913) 485.

Employment of trade instructors as guards.— It was held in Op. Atty.-Gen. (1908) 491, that prison instructors could not, in view of the provisions of sections 14 and 16 of the Civil Service Law (former sections 13 and 15) be called upon or assigned to perform the duties of guards (except on an

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emergency call), unless they should have previously passed an open competitive examination equivalent to that required for such position.

Section as affected by the Soldiers Law of 1887.—The present section leaves the appointment and removal of keepers and guards in prisons to the judgment and discretion of the agent and warden, subject to the approval of the superintendent of prisons. And even if the discretion of the appointing power was limited as to appointments and removals by the Soldier Law of 1887 (L. 1887, ch. 464), then these restrictions must be deemed to be removed by the present statute. People v. Lathrop, (1894) 142 N. Y. 13, 36 N. E. 805, affirming 71 Hun 202, 24 N. Y. S. 754.

Cited.—The present section was cited in Op. Atty.-Gen. (1913) 293, in connection with the construction of sections 31 and 30 of the Public Officers Law, relating to resignations and vacancies.

§ 111. Salary and expenses of superintendent. The superintendent of state prisons shall receive an annual salary of six thousand dollars, payable monthly by the treasurer on the warrant of the comptroller, and in addition thereto, all reasonable and necessary traveling expenses by him actually incurred and paid in the discharge of his official duties, not exceeding the sum of five hundred dollars per annum, and a further sum of four thousand nine hundred and fifty dollars per annum, or so much thereof as may be necessary, for clerk hire, copying and messenger, postage, stationery and other incidental expenses, of all which expenses he shall keep an account by items and verify the same by his oath to be filed with the comptroller.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 31, as amended by L. 1889, ch. 382, § 1.

§ 112. Salary and expenses of agent and warden. The agent and warden of each of said prisons shall recive an annual salary of three thousand five hundred dollars, and in addition thereto he shall be allowed rations from the prison stores for himself and family. The agent and warden of each of said prisons shall reside in the house connected therewith. The house for the agent and warden shall be provided with household furniture, fuel and lights for him and his family in addition to his salary, and also in addition thereto he shall be entitled to the services of such prisoners as may be reasonably necessary for household service. The comptroller is hereby authorized to audit and allow from time to time all necessary expenses and subsistence of the agent and warden, when necessarily traveling on official business, or when the attendance of such agent and warden is required at the seat of government, the necessity of such traveling and attendance to be

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decided by the comptroller, and the accounts therefor when so audited to be paid by the treasurer on the warrant of the comptroller.

This section was derived from R. S., pt. 3, ch. 3, tit. 2, § 32, as amended by L. 1889, ch. 382, § 1.

Cited.— This section was cited in Op. Atty-Gen. (1913) 486, in connection with the construction of section 110. See supra, § 110 note.

§ 113. **Salaries of physicians, clerks and chaplains.** The physician, clerk and chaplain of each of said prisons shall each receive an annual salary of two thousand dollars; each assistant clerk of said prisons shall receive such annual salary as shall be fixed by the comptroller, not exceeding one thousand five hundred dollars. They shall keep their offices at their respective prisons, and they shall be furnished with fuel and lights for their offices.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 33, as amended by L. 1889, ch. 382, § 1.

Liability of state for medical services furnished prisoners: see 50 L. R. A. (N. S.) 1223 note.

§ 114. **Compensation of other officers.** The superintendent of state prisons shall, from time to time, prescribe the compensation of the other officers of said prisons, but the compensation so fixed and prescribed for the following officers in each of such prisons shall not in any case exceed the rate of an annual salary, as follows: To the principal keeper, two thousand dollars; to the kitchen-keeper, store-keeper, hall-keeper, yard-keeper and sergeant of the guard, each fifteen[1] hundred dollars; to the state detective at Sing Sing prison, eighteen hundred dollars. The compensation of guards and attendants in prison hospitals shall be as follows: For the first year's service, eight hundred dollars; for the second year's service, nine hundred dollars; for the third year's service, ten hundred dollars; for the fourth year's service, eleven hundred dollars; for the fifth year's service, and thereafter, twelve hundred dollars.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 34, as amended by L. 1889, ch. 382, § 2; L. 1895, ch. 730; L. 1904, ch. 709, § 1. It was amended to read as above by L. 1912, ch. 50, § 1; L. 1914, ch. 189, § 1. The amendment by L. 1912, ch. 50, increased the pay of the sergeant of the guard from $900 to $1200; eliminated certain provisions relating to the pay of officers known as keepers prior to June 1, 1904, and readjusted the pay of guards. The amendment by L. 1914, ch. 189 increased the pay of kitchen-keeper, store-keeper, yard-keeper and sergeant of the guard from $1200 to $1500 a year.

[1] Formerly "twelve."

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Salary of guard as affected by previous service at Matteawan or Dannemora. — In fixing the compensation of a prison guard, pursuant to the present section, his prison services while an attendant at Matteawan or Dannemora state hospitals should not be taken into consideration. Op. Atty.-Gen. (1910) 916.

Salary of guard after leave of absence.—A guard in a state prison who has served five consecutive years and who thereafter obtains a leave of absence for one year, is entitled at the end of his leave of absence to the same salary to which he would have been entitled if he had not taken such leave, that is, the maximum salary of twelve hundred dollars. Op. Atty.-Gen. (1913) 282.

Cited.—This section was cited in Op. Atty.-Gen. (1913) 342, Op. Atty.-Gen. (1912) 279, in connection with the construction of section 289. See infra, § 289 note.

§ 115. Salaries to be paid monthly. The salaries of the officers specified in sections one hundred and eleven, one hundred and twelve, one hundred and thirteen, and one hundred and fourteen shall be payable at the end of each month. None of such officers mentioned shall receive any perquisites or emoluments for his services other than the compensation provided therefor by law.[1]

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 35, as amended by L. 1889, ch. 382, § 1. It was amended to read as above by L. 1912, ch. 107; L. 1914, ch. 187. The amendment by L. 1912, ch. 107, the words which the amendment by L. 1914, ch. 187, eliminated as shown by the footnote.

§ 116. Oath of office and bond of superintendent. Within ten days from the time of notice of his appointment, the superintendent of state prisons shall subscribe and take the oath of office prescribed by the constitution and file the same in the office of the secretary of state, and within such ten days he shall give to the people of the state of New York a bond in the penal sum of twenty-five thousand dollars, with two good sureties to be approved by the comptroller, conditioned for the faithful discharge of the duties of the office.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 36, as amended by L. 1889, ch. 382, § 1.

Form of oath: see CONSTITUTION, Art. XIII, § 1.

§ 117. Oaths of other officers. Each of the officers of said prisons shall, before entering on the duties of his office, take and subscribe the oath of office prescribed by the constitution of this state, which oath may be taken and subscribed before any officer

[1] Words "except that the principal keeper at Sing Sing prison, in addition to his salary, shall be provided with a house connected with the prison, but separate therefrom, and with household furniture, fuel and lights therefor and rations from the prison stores for himself and family," omitted.

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authorized by law to administer an oath. The said oath shall be filed in the office of the comptroller.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 37, as amended by L. 1889, ch. 382, § 1.

Form of oath: see CONSTITUTION, art. XIII, § 1.

§ 118. Bond of agent and warden. Each agent and warden of a state prison and each other officer or person, when required to perform the duties of an agent and warden, before entering on the duties of his office, shall execute a bond to the people of this state with sufficient sureties, to be approved by the superintendent of state prisons and the comptroller, in the penal sum of fifty thousand dollars, conditioned for the honest and faithful performance of his duties, and accounting for all moneys received by him as such agent and warden according to law, which bond when executed and approved shall be filed in the office of the comptroller of this state. Said comptroller may at any time require such agent and warden to execute a new bond as such, with new sureties, in the same form and with the same conditions, to be approved and filed as aforesaid.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 38, as amended by L. 1889, ch. 382, § 1.

Official undertakings generally: see PUBLIC OFFICERS LAW, §§ 11, 12, 13.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 485.

§ 119. Bonds of other officers. The clerk, principal-keeper, store-keeper, kitchen-keeper, hall-keeper, yard-keeper and superintendent of industries[1] of each of said prisons, before entering on the duties of his office shall each execute and file in the office of the comptroller of the state, a bond to the people of this state, with sufficient sureties to be approved by the superintendent of state prisons, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duties according to law. [2]If any such clerk, principal-keeper, store-keeper, kitchen-keeper, hall-keeper, yard-keeper or superintendent of industries shall have entered upon the duties of his office, prior to the passage of this act, without having executed and filed a bond as above provided, such bond shall be so executed and filed within thirty days from the passage of this act.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 39, as amended by L. 1889, ch. 382, § 1. It was amended to read as above by L. 1910, ch. 631, § 1. The amendments are shown in the footnotes.

[1] Words " and superintendent of industries," new.

[2] Remainder of section new.

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§ 120. Office, powers and duties of superintendent. The superintendent of state prisons shall have his office in the city of Albany. He shall have the superintendence, management and control of the state prisons and of the convicts therein, and of all matters relating to the government, discipline, police, contracts and fiscal concerns thereof. He shall have power and it shall be his duty to inquire into all matters connected with said prisons. He shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers, guards and employees of the prisons, except the clerks and assistant clerks, who shall be subject to such rules and regulations as shall be prescribed by the comptroller, and in regard to the duties to be performed by them, and for the government and discipline of each prison, as he may deem proper, and shall cause such rules and regulations to be recorded by the clerk of the prison, and a printed copy thereof to be furnished to each officer of the prison on his appointment. He shall also prescribe a system of accounts and records to be kept at each prison, which system shall be uniform at all of said prisons, and he may also make rules and regulations for a record of photographs and other means of identifying each convict received into said prisons. The superintendent of state prisons may delegate to his clerk authority to certify, in the absence of the superintendent, estimates on all funds to the comptroller, to sign orders for the transfer of convicts, to sign orders for the discharge of insane criminals, whose term of imprisonment has expired, to approve vouchers, to approve bills and pay rolls for payment by the comptroller. The superintendent of state prisons may require reports from the agent and warden or other officers of the prison in relation to their conduct as such officers, and shall have power to inquire into any improper conduct which may be alleged to have been committed by the agent and warden or other officer of either of the said prisons, and for that purpose to issue subpœnas to compel the attendance of witnesses, and the production before him of books, writings and papers in the same manner and with the like effect and subject to the same penalties for disobedience as in cases of trial before justices of the peace, and to examine in person or by attorney all persons who may be brought before him as such witnesses. The superintendent of state prisons is authorized and empowered to lease the

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railroad, constructed under and by the authority of the laws of eighteen hundred and seventy-eight, chapter one hundred and forty-eight, for such term of years and upon such terms and conditions as shall be approved of, in writing, by the governor and comptroller of this state.

It shall be the duty of the superintendent of state prisons to provide an electrical apparatus suitable and sufficient for the infliction of the punishment of death as provided by section five hundred and five of the code of criminal procedure in each of the state prisons of this state; together with the necessary machinery and appliances for the execution of convicted criminals as provided by said code.

This section was derived from: first paragraph, R. S., pt. 4, ch. 3, tit. 2, § 40, as amended by L. 1889, ch. 382, § 1, and also from L. 1878, ch. 148, § 4. Second paragraph is from L. 1889 ch. 36, § 1.

Bertillon system: see supra, § 21.

General powers and duties of superintendent: see CONSTITUTION, Art. V, § 4.

Prison officers not to be interested in certain contracts: see PENAL LAW, § 1828.

Member of board of charities as superintendent.— The duties pertaining to the offices of superintendent of prisons and state board of charities are not incompatible. It is not necessary, therefore, for a member of the board of charities to resign from the board before qualifying as superintendent of prisons. Op. Atty.-Gen. (1913) 340.

Vacancy in office of superintendent.— No provision seems to have been made in the law for the exercise of the powers of the superintendent of prisons upon a vacancy in the office and pending the appointment and confirmation of a successor. In such a case, it is the duty of the Governor to see that the laws in reference to the prisons are executed. So far as those duties have been delegated to the clerk by the superintendent, they can still be discharged by that officer if he remains in office. If he does not so remain it will be the duty of the executive, to the best of his ability, to administer the affairs of the office. He can avail himself of the benefit of the clerical force, but cannot delegate to any member of such force any discretionary power which theretofore devolved upon the superintendent. Op. Atty.-Gen. (1913) 150.

Cited.— This section was cited in Op. Atty.-Gen., (1912) 282, in connection with the construction of section 46. See supra, § 46 note.

It was also cited in Op. Atty.-Gen. (1909) 822, in connection with the construction of section 122. See infra, § 122 note.

§ 121. Annual report of superintendent. It shall be the duty of the superintendent of state prisons on or before the tenth day of January in each year to report to the legislature in writing the condition of each of the prisons for the year ending with the last day of the previous June, specifying the number of convicts confined during such year, and for what offenses, the number transferred from any prison and the reason therefor in each case, the

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moral, intellectual and physical condition of the prisoners and how employed, the amount of money expended during such year and how, in detail, the amount of money earned during such year and how, in detail, the amount paid into the treasury during such year, and such other matters as may seem pertinent and proper in the judgment of the superintendent.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 41, as amended by L. 1889, ch. 382, § 1. It was amended to read as above by L. 1916, ch. 118, § 22. The amendment changed the date on which the year is covered by the report from September to June.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 282, in connection with construction of section 46. See supra, § 46 note.

§ 122. Powers and duties of agent and warden. The agent and warden of each of said prisons shall attend regularly at such prison, and exercise a general supervision over its government, discipline and police, and attend to the fiscal and business concerns of the prison, and conform to and enforce the rules and regulations of the superintendent of state prisons in relation thereto. He shall give the necessary directions to the subordinate officers and employees of such prison, and shall examine whether they have been careful and diligent in the discharge of their several duties, shall examine diligently into the state of the prison, and into the health, condition and safe-keeping of the prisoners, and inquire into the justice of any complaints made by the prisoners relative to their provisions, clothing and treatment by such subordinate officers and employees. He may make such general orders or rules for the government of such subordinate officers and employees of the prison, not in conflict with the statutes of the state or the rules and regulations of the superintendent of state prisons, as he may deem proper, which rules and orders shall be entered in a book provided by the agent and warden for that purpose, and copies thereof shall be printed, and each of said subordinate officers and employees shall be furnished with a printed copy thereof upon his appointment.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 42, as amended by L. 1889, ch. 382, § 1.

Validity of statute authorizing board or officer to transfer prisoners from one place of confinement to another: see Ann. Cas. 1914A 1253 note.

Monthly and annual reports by agent and warden: see infra, §§ 128, 129.

Agent and warden to purchase supplies: see infra, § 132.

Neglect of duty by agent and warden: see infra, § 135.

Deposits by agent and warden in banks: see infra, § 193.

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Search of person by warden.—A prison warden is empowered to search any subordinate officer who he has good reason to believe is violating prison rules by smuggling or delivering to prisoners drugs or liquors or other articles prohibited. Op. Atty.-Gen. (1909) 822.

§ 123. Daily journal. The agent and warden of each of said prisons shall cause to be kept a daily journal of the proceedings of the prison, in which shall be entered a note of every infraction of the rules and regulations of the prison by any officer, which shall have come to his knowledge, and of every punishment inflicted on a prisoner, the nature and amount thereof and by whom it was inflicted, and also a memorandum of every well-founded complaint made by any convict of bad or insufficient food, want of clothing, or cruel or unjust treatment by a guard; such journal shall be kept open at all times to the examination of the superintendent of state prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 43, as amended by L. 1889, ch. 382, § 1.

§ 124. Account books. The agent and warden of each of said prisons shall cause to be kept regular books of entry, in which all his accounts and transactions shall be entered. Such books shall contain a regular and correct account of all moneys received by such agent and warden from any source whatever, by virtue of his office, including all moneys taken or received from convicts, or as the proceeds of property taken from them, and of all sums paid by him by virtue of his office, and the persons to whom and purposes for which the same were paid. Such books and the accounts entered therein shall be open for the examination of the superintendent of state prisons or the comptroller or of any person authorized by any of them.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 44, as amended by L. 1889, ch. 382, § 1.

§ 125. Deposit of convicts' deposits and earnings. The agent and warden of each of said prisons shall deposit at least once in each week to his credit as agent and warden, in such bank or banks as may be designated by the comptroller, all the moneys received by him as such agent and warden, as convict deposits and miscellaneous earnings, and send to the comptroller, and also to the superintendent of state prisons, weekly, a statement showing the

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amount so received and deposited, and when, from whom and for what received, and the days on which such deposits were made. Such statement of deposits shall be certified by the proper officer of the bank receiving such deposit or deposits. The agent and warden shall also verify by his affidavit that the sum so deposited is all the money received by him from whatever source of prison income, other than proceeds of the labor of prisoners, and of sales of articles manufactured by them during the week and up to the time of the last deposit appearing on such statement. Any bank in which such deposits shall be made shall, before receiving any such deposits, file a bond with the comptroller of the state, subject to his approval, for such sum as he shall deem necessary. The moneys so deposited by such agent and warden as convict deposits and miscellaneous earnings shall be subject to his check or draft only when countersigned by the comptroller. The comptroller shall countersign such check or draft only when the same is drawn for the payment of an expenditure included in an estimate approved by the superintendent of state prisons, and for the purposes hereinafter stated. The agent and warden of each prison shall, on the first day of each month, make an estimate and detailed statement of all moneys that will, in his judgment, be required for clothing, allowance and transportation of United States prisoners, and to repay to convicts moneys on deposit to their credit, and the interest thereon, as provided by section one hundred and thirty-four of this chapter, during such month, which estimate shall be forwarded to the superintendent of state prisons, who may revise the same by reducing the amount thereof, and he shall certify that he has carefully examined the same, and that the sums stated in said estimate are actually required for the purposes above stated, and he shall thereupon deliver the said estimate, so certified, to the comptroller.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 45, as amended by L. 1889, ch. 382, § 1; L. 1900, ch. 72, § 1.

Convicts' money to be furnished them on release: see infra, § 134.

Payment of deposits and earnings to prisoner.—A convict's deposits and earnings while he is in prison can be paid to him only with the approval of the superintendent of prisons and for disbursement by the warden. Op. Atty.-Gen. (1915) 315.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 126, in connection with the construction of section 193. See infra, § 193 note.

§ 126. Estimate of expenses; revision by comptroller. The agent and warden of each of said prisons shall, on the first day

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of each month, make an estimate, in minute detail, of the necessary expenses for the support and maintenance of the prison under his charge during such month, and shall submit such estimate to the superintendent of state prisons. The superintendent may revise the said estimate by reducing the amount thereof, and shall certify that he has carefully examined the same and that the articles contained in said estimate, or in said estimate as so revised by him, as the case may be, are actually required for the use of the prison, and the superintendent of state prisons shall thereupon present the said estimate and certificate to the comptroller, who shall thereupon authorize the said agent and warden to make his draft on the treasurer for the sum thus certified, or any part thereof, which amount shall be paid on the warrant of the comptroller; and it shall not be lawful for such agent and warden to make purchases on behalf of the state for any other than industrial purposes at such prison, unless such purchases have been included in the estimate as presented to and approved by the superintendent of state prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 46, as amended by L. 1889, ch. 382, § 1.

Prison fund: see STATE FINANCE LAW, § 103.

§ 127. Monthly statement of * financial agent and warden to comptroller. The agent and warden of each of said prisons shall on the first day of each month make to the comptroller a full and perfect statement of all the receipts and expenditures, specifying the items thereof, for the prison under his charge, for the preceding month, which shall be accompanied by the necessary vouchers regularly rendered according to their respective dates, with some short designation thereon of the consideration of payment, evidenced by the vouchers, and the amount of the vouchers carried out in figures; if the vouchers are objectionable, the comptroller shall enter his dissent on the particular voucher, and return it to the agent and warden, reporting the same, who shall cause it to be immediately corrected and returned. Every such statement shall be verified by an affidavit of the agent and warden thereunto annexed, as follows: "I, ..., agent and warden of the ..... prison, do solemnly swear that I have

* So in original. The section relates to the financial reports of the agents and wardens.

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deposited in the bank, designated by law for such purpose, all the moneys received by me, belonging to the state, during the last month; and I do further swear that foregoing is a true abstract of all the moneys received and expenditures made by me as such agent and warden during the month ending on the ..... day of....., nineteen hundred and ....., and that the goods and other articles therein specified were purchased and received by me at the prison of which I am in charge, and that the goods were purchased at fair cash market prices, and that the same were paid for in cash; and that neither I nor any person in my behalf had any pecuniary or other interest in the articles purchased; that I received no pecuniary or other benefit therefrom in the way of commissions, percentage, deductions or presents, or in any other manner whatever, either directly or indirectly, nor any promise of future payments, presents or benefits, or to any other person for me, either directly or indirectly." The affidavit of the clerk shall likewise be appended thereto, certifying that the articles contained in such bill were received at the prison, and that they conformed in all respects to the invoice of the goods received and entered by him, both in quality and quantity.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 47, as amended by L. 1889, ch. 382, § 1.

Cited.—This section was cited in People v. O'Brien, (1912) 78 Misc. 679, 140 N. Y. S. 257, judgment reversed 157 App. Div. 119, 141 N. Y. S. 1046, modified (1913) 209 N. Y. 366, 103 N. E. 710.

§ 128. Monthly report as to inmates. The agent and warden of each of said prisons shall make a monthly report, verified by his oath, to the superintendent of state prisons, stating the names of all convicts received into the prison during the preceding month, the counties in which they were tried, the crimes of which they were convicted, the nature and duration of their sentences, their former trade, employment or occupation, their habits, color, age, place of nativity, degree of instruction, and a description of their persons, and also stating whether any such convicts have ever been confined in any state or county prison, and if so, stating the offense for which they were confined, and the duration of their punishment, and also stating in such report the names of all the convicts pardoned or discharged during the past month, and all other particulars in relation to the parties pardoned or discharged,

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that are required to be stated in relation to the convicts received in the prison.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 48, as amended by L. 1889, ch. 382, § 1.

§ 129. Annual financial report. The agent and warden of each of said prisons shall, on or before the fifteenth day of August[1] in each year, render to the superintendent of state prisons a full and true report for the year ending with the last day of the previous June,[2] of all moneys received by him on account of the prison under his charge, and all the moneys expended under his direction[3] for the use thereof, and also an inventory of the goods, raw materials and other property of the state on hand on the last day of the previous September, which account and inventory shall be attested by the oath of the agent and warden and clerk of the prison to be just and true, together with a statement of all changes in the officers of such prison during such year, and the annual reports to the agent and warden of the clerk, physician and chaplain of each prison, and such other matters as shall be required by the superintendent of state prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 49, as amended by L. 1889, ch. 382, § 1. It was amended to read as above by L. 1916, ch. 118, § 23. The amendments are shown in the footnotes.

Falsification of accounts by public officers: see PENAL LAW, § 1865.

§ 130. Annual inventory. The superintendent of state prisons may, whenever he shall deem advisable, cause an estimate to be made of the value of the goods and other property of the state, for which an inventory has been rendered to him by the agent and warden of either of said prisons, which estimate shall be made under oath by two or more competent persons to be appointed for that purpose by the superintendent, which inventory and estimate shall be transmitted to the comptroller of the state on or before the first day of January in each year, with such observations and remarks thereon as the superintendent may deem necessary to enable the comptroller to understand the same and to correct any errors that may be discovered therein.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 50, as amended by L. 1889, ch. 382, § 1.

[1] Formerly November.
[2] Formerly September.
[3] Words "under his direction" in place of words "by him."

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§ 131. Agent and warden to control fiscal transactions; recovery of debts to prison. All the fiscal transactions and dealings on account of each prison shall be conducted by and in the name of the agent and warden thereof, who shall have control over all matters of finance relating to such prison, subject to the direction and supervision of the superintendent of state prisons. Such agent and warden shall be capable in law of suing in all courts and places, and in all matters concerning the prison, by his name of office, and by that name shall be authorized to sue for and recover all sums of money due from any person to any former agent, or agent and warden of the prison, or to the people of this state on account of such prison. But it shall not be lawful in any such suit or action for any defendent to plead or give in evidence any offset or matter by way of recoupment or counterclaim except for payments made, and not credited to such defendant, or to recover any judgment against such agent and warden in such suit or action other than for the costs and disbursements therein. Each agent and warden shall enforce the payment of all debts due to the prison under his charge with as little delay as possible, but subject to the approbation of the superintendent of state prisons, he may accept any security from any debtor on granting him time, that he may deem conducive to the interests of the state.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 51, as amended by L. 1889, ch. 382, § 1.

Cited.— This section was cited in People v. O'Brien, (1912) 78 Misc. 679, 140 N. Y. S. 257, judgment reversed 157 App. Div. 119, 141 N. Y. S. 1046, modified (1913) 209 N. Y. 366, 103 N. E. 710.

§ 132. Agent and warden to purchase supplies. The agent and warden of each of said prisons shall supply provisions and other suitable articles for the maintenance and supply of the prison under his charge, either by contract or by purchase, as shall be directed by the superintendent of state prisons. In case the said superintendent shall direct that such supplies shall be obtained by contract, the agent and warden shall cause notice to be published in a newspaper printed in the county in which such prison is situated, and in such other newspapers and for such time as the said superintendent shall direct, stating the particular supplies wanted, the manner in which they are to be delivered, and the time during which proposals will be received by such agent and warden for furnishing the same. Contracts shall be made by the

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agent and warden with those persons whose proposals in pursuance of such notice shall be most advantageous to the state, and who shall give satisfactory security for the performance of their contracts, subject to the approval of the said superintendent, unless the superintendent shall deem it expedient to decline all proposals and advertise anew. The articles of food and the quantities of each kind shall be prescribed by the said superintendent and inserted in the contract. All contracts made under this section shall be reduced to writing and signed in duplicate by the parties. One of such duplicates shall be filed with the clerk of the prison, and a copy thereof shall be delivered to the superintendent of state prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 52, as amended by L. 1889, ch. 382, § 1.

Butterine and similar products not to be purchased by penal institutions: see AGRICULTURAL LAW, §§ 53, 54.

Prison officers not to be interested in prisons contracts: see PENAL LAW, § 1828.

Cited.—This section was cited in People v. O'Brien, (1912) 78 Misc. 679, 140 N. Y. S. 257, judgment reversed 157 App. Div. 119, 141 N. Y. S. 1046, modified (1913) 209 N. Y. 366, 103 N. E. 710.

§ 133. Bills and receipts for supplies and services. The agent and warden of each of said prisons shall take bills for all goods purchased by him for such prison at the time of such purchase, and shall take similar bills and receipts for such services that shall be rendered for such prison at the time of making payment therefor, and the person to whom any bill shall be paid by either of said agents and wardens, shall in all cases make and subscribe an affidavit to be sworn to before some person duly authorized by law to take the same, stating that said account and the articles and services therein specified were actually furnished or rendered as charged; that neither the agent and warden, nor any person for him or in his behalf had any pecuniary or other interests in the articles sold or services rendered, or in the profits thereof; that to the best of his knowledge and belief no commissions, presents or profits directly or indirectly connected therewith had been paid to him or any other person; or had been promised to be paid in the future to him or to any other person; that the said bill represents the correct amount due him; that the articles included in such account were sold at fair cash market prices, and that he has

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actually received the full amount in cash from the said agent and warden.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 53, as amended by L. 1889, ch. 382, § 1.

Prison officers not to be interested in prison contracts: see PENAL LAW, § 1828.

Auditing fraudulent claims: see PENAL LAW, § 1863.

Cited.— This section was cited in People v. O'Brien, (1912) 78 Misc. 679, 140 N. Y. S. 257, judgment reversed 157 App. Div. 119, 141 N. Y. S. 1046, modified (1913) 209 N. Y. 366, 103 N. E. 710.

§ 134. Convicts' money and other property; what to be furnished them on their release. The agent and warden of each of said prisons shall take charge of all moneys and other articles which may be brought to the prison by the convicts, and shall cause the same, immediately upon the receipt thereof, to be entered by the clerk among the receipts of the prison; which money and other articles, whenever the convict from whom the same was received shall be discharged from prison, or the same shall be otherwise legally demanded, shall be returned by the said agent and warden to such convict or other person legally entitled to the same; and for such money as the said convict, or any other person for such convict, may have so deposited, such convict shall be entitled to receive interest at the rate of four per centum per annum from the time of such deposit until the same shall be so repaid to such convict as aforesaid, and vouchers shall be taken therefor. The agent and warden of each of said prisons shall furnish to each convict who shall be discharged from prison by pardon or otherwise, or who shall be released therefrom on parole, necessary clothing, not exceeding twelve dollars in value, (between the first day of November and the first day of April, clothing not exceeding eighteen dollars in value and including an overcoat, shall be so furnished) and ten dollars in money, and a railroad ticket for the transportation of one person from such prison to the place of the conviction of such convict, or to such other place as such convict may designate, at no greater distance from said prison than the place of conviction.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 54, as amended by L. 1889, ch. 382, § 1.

Deposit of convicts' deposits and earnings: see supra, § 125.

Earnings of prisoners and disposition of moneys paid prisoners for their labor: see infra, §§ 185, 187.

Cited.— This section was cited in Op. Atty.-Gen. (1915) 315, in connection with the construction of section 125. See supra, § 125 note.

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§ 135. Neglect of duty by agent and warden, punishable. If the agent and warden of a state prison shall wilfully neglect or refuse to make any weekly or monthly return, estimate or statement, or to transmit any statement and certificate of such deposits to the comptroller, as hereby directed, it shall be the duty of the comptroller to notify the superintendent of state prisons of such omissions, and it shall be the duty of such superintendent to order the bond of the agent and warden to be prosecuted for the recovery of any moneys which may be in his hands belonging to the state. The agent and warden of a state prison shall be liable to indictment and punishment for any wilful neglect of duty, or for any malpractice in the discharge of the duties of his office.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 55, as amended by L. 1889, ch. 382, § 1.

Neglect of duty by public officer: see PENAL LAW, § 1841.

Suffering prisoner to escape: see PENAL LAW, § 1697.

§ 136. General duties of clerk. It shall be the duty of the clerk of each of said prisons to conform to the rules of discipline established by the superintendent of state prisons, and to perform his duties as prescribed by the comptroller in accordance with law; to keep a register of convicts, in which the names of the convicts shall be alphabetically arranged, and in which shall be entered, under appropriate columns, the date of conviction, where born, age, occupation, complexion, stature, crime, court in which, county where convicted, term of sentence, number of previous convictions, to what prison or prisons previously sent, when discharged and how discharged, and such additional facts as the superintendent of state prisons may require to be stated on the register; to annually report to the agent and warden of such prison on the first day of August[1] the number of convicts remaining in prison on the last day of the previous June,[2] the number received during the year ending with the last day of the previous June,[2] the number discharged by expiration of sentence, habeas corpus or by the courts, the number of deaths and escapes, and the number transferred to any other penal institution during such year, and the number remaining in prison on the last day of said June;[2] to keep books of account of the financial transactions of the prison; to keep a separate account in a book provided for that purpose of all

[1] Formerly November.

[2] Formerly September.

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money and other articles received by the agent and warden from each convict, crediting such convict therefor; to enter each bill taken by the agent and warden of the prison in the books of the prison at the time of the receipt of the articles mentioned in such account, and in case the articles received do not agree in all respects with the invoice, he shall immediately notify the agent and warden of such discrepancy, and note in his book the discrepancy, whether in weight, quantity or quality; to preserve in the prison a set of all official reports made to the legislature respecting the same, and a set of similar reports in relation to each of the other state prisons, and for that purpose a suitable number of such reports, when printed, shall be supplied to him by the superintendent of state prisons; to make an annual report, attested by his oath to be just and true, to the secretary of state, on or before the first day of September[1] of each year, stating the names of convicts discharged or pardoned from said prison during the year ending with the last day of the preceding June,[2] and all the particulars in relation to such convicts as are required to be stated in the agent and warden's monthly report to the superintendent of state prisons, and stating also, in the cases of pardons, the time unexpired of the time for which the convicts so pardoned were respectively pardoned, when such pardons were granted, and the conditions, if any, on which they were granted, and also the state of health of each convict so pardoned at the time of his discharge.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 56, as amended by L. 1889, ch. 382, § 1. It was amended to read as above by L. 1915, ch. 105; L. 1916, ch. 118, § 24. The amendment by L. 1915, ch. 105, omitted the words "to reside regularly within one mile from said prison," which formerly followed the words "clerk of each of said prisons," at the beginning of the section. The amendments by L. 1916, ch. 118, § 24, are shown in the footnotes.

Cited.—This section was cited in People v. O'Brien, (1912) 78 Misc. 679, 140 N. Y. S. 257, judgment reversed 157 App. Div. 119, 141 N. Y. S. 1046, modified (1913) 209 N. Y. 366, 103 N. E. 710.

§ 137. Duties of assistant clerk and of assistant foreman of construction at Clinton prison. The assistant clerk of each of said prisons shall assist the clerk in the performance of his duties, in conformity with the disciplinary rules and regulations of the superintendent of state prisons, and under the direction of the

[1] Formerly December.
[2] Formerly September.

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comptroller. Any prison employe shall, when so directed by the agent and warden, perform the same duties and have the same authority as a prison guard.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 57, as amended by L. 1889, ch. 382, § 1; L. 1903, ch. 447, § 1.

§ 138. Duties of physician. It shall be the duty of the physician at each of said prisons to [1]attend daily during the proper business hours of such prison, and at all times hold himself in readiness to discharge his duties as such physician whenever directed by the agent and warden, unless, by the direction of the superintendent of state prisons, he is otherwise engaged in transacting business on account of the prison; to examine weekly the cells of the convicts for the purpose of ascertaining whether they are kept in a proper state of cleanliness and ventilation, and report the same, weekly, to the agent and warden in writing; to examine daily into the quality and state of the provisions delivered to the prisoners, and whenever he shall have reason to believe that any of such provisions are prejudicial to the health of the prisoners, he shall immediately make a report thereof to the agent and warden of the prison in writing; to have charge of the hospital, to attend at all times to the wants of the sick convicts whether in the hospital or in their cells; to prescribe the diet of sick convicts, whether in the hospital or in their cells or elsewhere, and his directions in relation thereto shall be followed by the agent and warden; to keep a daily record of all admissions to the hospital, indicating the color, nativity, age, occupation, habit of life, crime, time of entrance and discharge from the hospital, date of admission to the prison, time in county prison before conviction, disease, if afflicted with scrofula before admission, scrofula during the first, second and third six months after admission to prison, and of the prescriptions and treatment of each case; to report monthly to the agent and warden the number of patients received into the hospital during the last preceding month, stating their respective ages, color, disease and occupations in prison, the quality and kind of medicine administered during the month, the number of those discharged, their condition when discharged, the time they shall have remained in the hospital, the number of deaths, stating cause of such deaths; and it shall be his further duty to state in such re-

[1] Words "reside regularly within one mile from said prison, to," omitted.

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port, the number of sick convicts not received into the hospital, for whom he shall have prescribed during the last preceding month, and the quantity and kind of medicine so prescribed, and the number of days during which such convicts, in consequence of sickness, shall have been relieved from labor; to make an annual report to the agent and warden on or before the first day of November in each year of the sanitary condition of the prison for the year ending with the last day of the previous September, with a condensed statement of the information contained in his monthly reports, and of such other matters as shall be required by the agent and warden.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 58, as amended by L. 1882, ch. 282, § 1. It was amended to read as above by L. 1915, ch. 417. The amendment is shown in the footnote.

§ 139. Duties of chaplain. It shall be the duty of the chaplain of each of said prisons, to perform religious services in the prison, under such regulations as the superintendent of state prisons may prescribe, and to attend to the spiritual wants of the convicts; to visit the convicts in their cells for the purpose of giving them religious and moral instruction, and to devote at least one hour in each week day and the afternoon of each Sunday to such instruction; to furnish, at the expense of the state, a bible to each convict if requested by such convict; to take charge of the library and to take care that no improper books are introduced into the cells of the convicts, and if any such books shall be found either in the cells or in the possession of a convict, to take away and return the same to the agent and warden, and for the purpose of properly discharging these duties, to visit weekly each cell in the prison; to visit daily the sick in the hospital; to make a quarterly report to the agent and warden, stating the number of convicts that shall have been instructed during the last quarter, the branches of education in which they shall have been instructed, the text-books used in such instruction, and the progress made by the convicts, and to note especially, any cases in which an unusual progress has been made by a convict; to make an annual report on or before the first day of November in each year, to the agent and warden, which report shall be attested by oath to be just and true, relative to the religious and moral conduct of the prisoners in the prison

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during the year ending with the last day of the previous September, stating therein what services he shall have performed, and the fruits, if any, of his instructions, and he shall append thereto, as far as practicable, in tabular form, a statement exhibiting the number of convicts in prison, on the last day of such September, and at what age convicted, specifying separately the number born in the United States, foreigners, and of what country, and the nativity of their parents, the number that can not read, that can read only, read and write, well educated, classically educated, temperate, intemperate, healthy, scrofulous, whether employed at the time of the commission of the crime, counties where convicted, occupation, sentence, how many times recommitted, and social state.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 59, as amended by L. 1883, ch. 382, § 1.

§ 140. Duties of principal keeper. It shall be the duty of the principal keeper of each of the prisons, to keep a timebook, in which shall be inserted the names of all the officers and guards belonging to the prison, except the agent and warden, and opposite to each name he shall daily mark whether such officer or guard was absent or present, and at the end of each month shall add up the same and verify such statement by his affidavit that it is correct, which statement, so sworn to, shall be delivered to the agent and warden, who shall forward the same to the comptroller with his monthly report.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 60, as amended by L. 1889, ch. 382, § 1.

§ 141. Duties of store-keeper. It shall be the duty of the store-keeper of each of said prisons to take charge of all provisions and other articles purchased for the prison, to compare all such purchases with the bills thereof, furnished to him by the agent and warden of such prison, and to note all discrepancies, and to enter the goods so received in books to be kept by him for that purpose; to keep such goods, when received, in some safe place under his charge, and no goods shall be delivered by him except on a requisition from the kitchen-keeper, or the agent and warden or principal keeper, or in his or their absence, the person acting as such. Such requisition shall in all cases be in writing, and be

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by him placed on file, and in addition thereto, the articles named in such requisition shall be entered in his books, which books shall state what the articles were, the quantity delivered, and on whose order they were delivered, and to what shop or place sent. It shall also be his duty to keep a perfect, just and true account of all goods sold by the agent and warden, or other officers of the prison, belonging to the prison; at the end of each month to make out a correct statement, attested by his affidavit, giving the amount of each article received, and the quantity, and the amount and kinds of goods delivered on requisitions, and to whom delivered, and the quantity of each kind of property then on hand, with the value thereof at that time, which statement, when made up, shall be delivered to the agent and warden, and by him examined, and if found correct, he shall so certify thereon; such report shall be then forwarded to the comptroller by the agent and warden.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 61, as amended by L. 1889, ch. 382, § 1.

Auditing fraudulent claims: see PENAL LAW, § 1863.

Falsification of accounts: see PENAL LAW, § 1865.

§ 142. Duties of kitchen-keeper. It shall be the duty of the kitchen-keeper of each of said prisons to keep a proper book, and to enter therein all goods received on his requisition from the store-keeper, and the amount cooked and sent to the hospital, and to make a report, attested by his oath to be just and true, at the end of each month to the agent and warden of the amount of such goods then on hand, and the amount received and consumed during the month.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 62, as amended by L. 1889, ch. 382, § 1.

§ 143. Notes, drafts and other evidences of debt not to be given. No agent and warden or other officer of either of the state prisons of this state shall give any note, draft or other evidence of debt, except a check on the bank designated by the comptroller, as aforesaid, and such checks and drafts as are authorized by law, in payment for any article purchased for either of said prisons, and signed by him or them individually or in their official capacity, nor shall any such agent and warden, or other officer, sign any paper as agent and warden for the purpose or with the intent

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of putting or having the same put in circulation for any purpose whatever.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 63, as amended by L. 1889, ch. 382, § 1.

§ 144. Imprisonment of convict sentenced to death and commuted by governor. The agent and warden of each of said prisons shall receive into the prison under his charge, on the order of the governor, any person convicted of any crime punishable by death, or who shall be pardoned, on condition of being confined either for life or a term of years in a state prison, and confine such prisoner according to the terms of such condition.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 72, as amended by L. 1889, ch. 382, § 1.

§ 145. Transfer from one prison to another. Whenever the transfer of prisoners from one state prison to another shall be ordered by the superintendent of state prisons, the agent and warden of the prison from which such transfer is to be made, shall cause the prisoners to be sufficiently chained in pairs so far as practicable, and to be transported to the prison to which they are so ordered to be transferred, and to be delivered together with the certified copies of their sentences to the agent and warden of such last-mentioned prison, who shall receive and keep them according to their sentences respectively, as if they had been originally sentenced thereto. The persons so employed to transport such prisoners shall prohibit all intercourse between them, and may inflict any reasonable and necessary correction upon such prisoners for disobedience or misconduct in any respect. All necessary expenses of such transfer of such prisoners shall be deemed a part of the incidental expenses of the prison from which they shall be transferred. The necessary expenses of the transfer of any prisoner from a state prison to the state asylum for insane criminals, or to any other penal institution, shall also be deemed a part of the incidental expenses of such prison.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 73, as amended by L. 1889, ch. 382, § 1.

§ 146. Escaped prisoners, reward for; increased imprisonment because of escape. Whenever any prisoner confined in a state prison, and not released on parole, shall escape therefrom, it shall

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be the duty of the agent and warden of such prison to take all proper measures for the apprehension of the prisoner so escaped; and in his discretion he may offer a reward not exceeding fifty dollars for the apprehension and delivery of every such escaped prisoner; and, with the consent of the superintendent of state prisons, such reward may be increased to a sum not exceeding two hundred and fifty dollars each. The agent and warden of a state prison may pay a reward not exceeding fifty dollars for the apprehension and delivery of any such escaped prisoner, whether such reward shall have been previously offered or not. Any such prisoner, escaped from any state prison or penitentiary in this state, and afterwards arrested, shall serve out the full balance of his sentence remaining unexpired at the time of such escape, notwithstanding the time may have expired previous to his recovery, as if he had remained in prison, except as provided by article nine of this chapter. All suitable rewards and other sums of money paid for so advertising and apprehending any such escaped prisoner shall be paid by the agent and warden out of the funds of the prison.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 89, as amended by L. 1889, ch. 382, § 1.

Escape of prisoner: see PENAL LAW, §§ 1693, 1694, 1695, 1696, 1697.

Concealing escaped prisoner: see PENAL LAW, § 1698.

Escaping prisoner may be recaptured: see PENAL LAW, § 1693.

§ 147. Agent and warden to report as to prisoner believed insane when crime was committed. Whenever the agent and warden of a state prison shall have reason to believe that any prisoner in the prison was insane at the time he committed the offense for which he was sentenced, such agent and warden shall communicate in writing to the governor his reason for such opinion, and shall refer the governor to all the sources of information with which he may be acquainted in relation to the insanity of such prisoner.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 90, as amended by L. 1889, ch. 382, § 1.

Inquiry into insanity of defendant after conviction: see Code Crim. Pro., § 658 et seq.

Insane convicts to be removed to Dannemora State Hospital: see INSANITY LAW, § 148.

§ 148. Prisoners, how graded. The superintendent of state prisons shall direct the classification of prisoners into three

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classes or grades, as follows: In the first grade shall be included those appearing to be corrigible or less vicious than the others and likely to observe the laws and to maintain themselves by honest industry after their discharge; in the second grade shall be included those appearing to be incorrigible or more vicious, but so competent to work and so reasonably obedient to prison discipline as not seriously to interfere with the productiveness of their labor, or of the labor of those in company with whom they may be employed; in the third grade shall be included those appearing to be incorrigible or so insubordinate or so incompetent otherwise than from temporary ill health as to seriously interfere with the discipline or productiveness of the labor of the prison.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 95, as amended by L. 1889, ch. 382, § 1.

§ 149. **Promotions and reductions in grade.** The superintendent of state prisons may make rules and regulations for the promotion or reduction of the prisoners from one grade to another, and shall transfer from time to time the prisoners in the state prisons from one prison to another with reference to the respective capacities of the several state prisons, or with reference to the health or reformation of the prisoners, or with reference to including all prisoners of one grade as nearly as may be practicable in one prison, or may direct the separation from each other of the prisoners of different grades so far as practicable within each state prison.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 96, as amended by L. 1889, ch. 382, § 1.

§ 150. **Prison instruction.** It shall be the duty of the agent and warden of each of such prisons, so far as practicable and necessary, to appoint as guards of such prison, persons qualified to instruct the prisoners in the trades and manufactures prosecuted in such prison, or in other industrial occupations. Instruction shall also be given in the useful branches of an English education to such prisoners as in the judgment of the agent and warden or chaplain may require the same and be benefited thereby. The time devoted to such instruction shall not be less than an average of one hour and a half daily, Sunday excepted, between the hours

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of six and nine in the evening, in such room or rooms as may be provided for that purpose.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 84, as amended by L. 1889, ch. 382, § 1.

§ 151. Single cells. Whenever there shall be a sufficient number of cells in the prison, it shall be the duty of the agent and warden to keep each prisoner single in his cell at night, and also in the day time when not employed, unless such prisoner be then released on parole.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 85, as amended by L. 1889, ch. 382, § 1.

§ 152. Clothing, bedding and food of prisoners. The clothing and bedding of the prisoners shall be of coarse materials, and shall be manufactured as far as practicable in the prison. The prisoners shall be supplied with a sufficient quantity of inferior but wholesome food.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 86, as amended by L. 1889, ch. 382, § 1.

§ 153. Prison punishment. The punishments commonly known as the shower bath, crucifix, and yoke and buck are hereby abolished in all the state prisons of this state. No guard in any prison shall inflict any blows whatever upon any prisoner, unless in self-defense, or to suppress a revolt or insurrection. When several prisoners combine, or any single prisoner shall offer violence to any officer of a state prison, or to any other prisoner, or do or attempt to do any injury to the building or any workshop or to any appurtenances thereof, or to any property therein, or shall attempt to escape, or shall resist or disobey any lawful command, the officers of the prison shall use all suitable means to defend themselves, to enforce observation of discipline; to secure the persons of the offenders, and to prevent any such attempt or escape.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 87, as amended by L. 1889, ch. 382, § 1.

Right to inflict corporal punishment upon convict: see 18 Ann. Cas. 298 note; Ann. Cas. 1916C 130 note. *Personal liability of prison officer to convict for tort:* see Ann. Cas. 1915D 964 note.

§ 154. Solitary confinement on short rations. If in the opinion of the agent and warden of such prison it shall be deemed neces-

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sary, in any case, to inflict unusual punishment in order to produce the entire submission or obedience of any prisoner, it shall be the duty of such agent and warden to confine such prisoner immediately in a cell, upon a short allowance, and to retain him therein until he shall be reduced to submission and obedience. The short allowance of each prisoner so confined shall be prescribed by the physician, whose duty it shall be to visit such prisoner and examine daily into the state of his health until the prisoner be released from solitary confinement and returned to his labor.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 88, as amended by L. 1889, ch. 382, § 1.

§ 155. Contagious disease in prison. In case any pestilence or contagious disease shall break out among the prisoners in any of the state prisons, or in the vicinity of such prisons, the superintendent of state prisons may cause the prisoners confined in such prison, or any of them, to be removed to some suitable place of security, where such of them as may be sick shall receive all necessary care and medical assistance; such prisoners shall be returned as soon as may be to the state prison from which they were taken, to be confined therein according to their respective sentences.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 92, as amended by L. 1889, ch. 382, § 1.

§ 156. Fire in prison. Whenever by reason of any state prison, or any building contiguous to such prison, being on fire, there shall be reason to apprehend that the prisoners may be injured or endangered by such fire, or may escape, it shall be the duty of the agent and warden of such prison to remove such prisoners to some safe and convenient place, and there confine them until the necessity of such removal shall have ceased.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 93, as amended by L. 1889, ch. 382, § 1.

§ 157. Imprisonment of criminals convicted of crime against the United States. It shall be the duty of the agent and warden of each of the state prisons, in accordance with the provisions of section one hundred and fifty-eight, to receive into the said prison and safely to keep therein, subject to the discipline of such prison, any criminal convicted of any offense against the United States, sentenced to imprisonment therein, by any court of the United

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States, sitting within this state, until such sentence be executed, or until such convict shall be discharged by due course of law; the United States supporting such convict, and paying the expenses attendant upon the execution of such sentence.

This section was derived from L. 1847, ch. 460, tit. 3, § 145.

Detention of United States convicts in Elmira reformatory.—The Elmira reformatory is a state prison within the meaning of the present section, and it is lawful to receive and detain therein criminals convicted and sentenced to that institution by a United States court sitting within the state. Op. Atty.-Gen. (1894) 366.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 592, in connection with the construction of section 211. See infra, § 211 note.

§ 158. Restrictions on imprisonment of United States prisoners. It shall not be lawful for the superintendent of state prisons, or the agents and wardens, or managers or superintendents of any of the penal institutions in this state, to hereafter receive or permit to be received therein, any prisoner convicted in the United States courts, held without the state of New York, or in any state court other than that of the state of New York. It shall be lawful for the agents and wardens of the state prisons, and the managers of the reformatories of the state to receive prisoners convicted and sentenced in the United States courts in this state, for one year or more, upon proper contracts made for their care and custody, to be approved by the superintendent of state prisons; but no prisoners sentenced in United States courts in this state, for one year or more, shall be received in any penal institution in this state, except in the state prisons and reformatories as aforesaid.

This section was derived from section 116, as added by L. 1890, ch. 395, § 1 to R. S., pt. 4, ch. 3, tit. 2, and as so added amended by L. 1892, ch. 130, § 1, and L. 1896, ch. 429, § 2. As added by L. 1890, ch. 395, § 1; section 116 prohibited the employment of prisoners in hat-making and typesetting, and the amendment L. 1892, ch. 130, § 1, added to the prohibited employments the laundering of shirts and collars. The amendment by L. 1896, ch. 429, § 2, changed the subject of section 116, making it to read as given in the text.

Right of reformatory at Bedford to receive United States prisoners.— The state reformatory for women at Bedford, being subject to the State Charities Law and not under the supervision or control of the superintendent of prisons, is not such a reformatory as is referred to in the present section, and therefore it has no statutory authority to receive United States prisoners. Op. Atty.-Gen. (1909) 857.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 592, in connection with the construction of section 211. See infra, § 211 note.

§ 159. Penalty for neglect or violation of duty as to United States prisoners. The agent and warden of any prison to whom

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any such prisoner may have been committed, shall be liable to the like penalties and punishment, for any neglect or violation of duty in respect to the custody of such prisoner, as if such prisoner had been committed by virtue of a commitment or conviction under the authority of this state.

This section was derived from L. 1847, ch. 460, tit. 3, § 159.

§ 160. Persons authorized to visit prisons. The following persons shall be authorized to visit at pleasure all state prisons: The governor and lieutenant-governor, secretary of state, comptroller and attorney-general, members of the legislature, judges of the court of appeals, supreme court and county judges, district attorneys and every minister of the gospel having charge of a congregation in the town wherein any such prison is situated. No other person not otherwise authorized by law shall be permitted to enter a state prison except under such regulations as the superintendent of state prisons shall prescribe.

This section was derived from L. 1847, ch. 460, tit. 3, § 159.
Unlawful visitation of prison: see PENAL LAW, § 1691.

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ARTICLE 7

Prison Labor

Section 170. Contracts prohibited.
171. Prisoners to be employed; products of labor of prisoners.
172. Labor of prisoners of first grade, how directed.
173. Labor of prisoners of second grade, how directed.
174. Labor of prisoners of third grade, how directed.
175. Prisoners employed for use of state, and divisions thereof.
176. No printing or photo-engraving to be done by prisoners for use of state.
177. Labor of prisoners in prisons, reformatories, penitentiaries and county jails.
178. Labor of prisoners in certain institutions.
179. Employment of convicts on public highways.
180. Persons interfering with convicts employed on highways guilty of misdemeanor.
181. Classification of industries; report as to industries.
182. Articles manufactured to be furnished to the state or division thereof.
183. Estimates of articles required to be furnished commission of prisons by officers.
184. Board of classification; prices to be fixed.
184-a. Farm products of penal institutions to be furnished to other institutions.
185. Earnings of prisoners.
186. Disposition of fines.
187. Disposition of moneys paid to prisoner for his labor.
188. Monthly statement of receipts and expenditures for prison industries.
189. Statement of machinery and material required.
190. Machinery and materials for prison industries, how purchased.
191. Disposition of machinery on discontinuance of industry.

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Section 192. Purchases to be included in estimates.
193. Deposits by agent and warden in banks.
194. Violations of prison labor regulations.

§ 170. Contracts prohibited. The superintendent of state prisons shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any prisoner in any state prison, reformatory, penitentiary or jail in this state, or the product or profit of his work shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation; except that the convicts in said penal institutions may work for, and the products of their labor may be disposed of to, the state or any political division thereof or for or to any public institution owned or managed and controlled by the state, or any political division thereof.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 97, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

Contract system of prison labor abolished: see CONSTITUTION, Art. III, § 29. *Convict made goods:* see LABOR LAW, § 190 et seq. *Unlawful dealing in convict made goods:* see PENAL LAW, § 620.

Right of person illegally hired out as convict laborer as against lessee: see Ann. Cas. 1912A 269 note. *Relation of master and servant as existing between employer and convict laborer:* see 13 Ann. Cas. 168, note; Ann. Cas. 1912B 265 note. *Responsibility of one hiring convict for acts of laborer:* see 12 L. R. A. (N. S.) 317 note. *Right of lessee of convicts to sublet them or assign contract:* see 16 Ann. Cas. 743 note.

Retroactive effect of section.— It was held in Bronk v. Barckley, (1897) 13 App. Div. 72, 43 N. Y. S. 400, that the statute embodying the present section had no retroactive effect and did not invalidate a contract lawfully made prior to its adoption. See also the similar ruling in Op. Atty.-Gen. (1896) 184, as to the retroactive affect of the constitutional prohibition of convict contract labor. It was held in Mills Co. v. State, (1906) 110 App. Div. 843, 97 N. Y. S. 676, affirmed (1907) 187 N. Y. 552, 80 N. E. 1109, that where a contract for prison labor was entered into in the name of the state by the board of managers of a state reformatory which provided that in case by the intervention of legislation, or other authorities ruling outside of and beyond the reasonable control of the first party, it shall at any time become necessary to discontinue the business, the second party shall not have for that reason any claim for damages against the first party," the rescission of the contract by the board of managers by reason of the subsequent adoption of article 3 of section 29 of the state constitution and the passage of the present statute, which prohibit the farming out of prison labor, did not entitle the contractor to damages from the state by reason of the rescission of the contract.

Prison electricity for use of villages.—A contract to furnish electricity produced and generated by convict labor in a state prison, to the residents of a village for residential and individual purposes, would be illegal, but electricity so produced may be furnished for public purposes to the village, that being a political division of the state. Op. Atty.-Gen. (1915) 177.

Contract for convict labor on state highway.—A contract between the board of supervisors of a county workhouse and a contractor constructing a state

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highway, for convict labor on such highway, would be illegal. Op. Atty.-Gen. (1912) 209.

As to employment of convicts on public highways, see infra, § 179.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 299, in connection with the construction of section 182. See infra, § 182 note.

§ 171. Prisoners to be employed; products of labor of prisoners. The superintendent of state prisons, the superintendents, managers and officials of all reformatories and penitentiaries in the state, shall, so far as practicable, cause all the prisoners in said institutions, who are physically capable thereof, to be employed at hard labor, for not to exceed eight hours of each day, other than Sundays and public holidays, but such hard labor shall be either for the purpose of production of supplies for said institutions, or for the state, or any political division thereof, or for any public institution owned or managed and controlled by the state, or any political division thereof; or for the purpose of industrial training and instruction, or partly for one, and partly for the other of such purposes.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 98, as amended by L. 1889, ch. 382, § 1; L. 1892, ch. 429, § 1.

Violation of prison labor regulations: see infra, § 194. *Holidays and half-holidays:* see GENERAL CONSTRUCTION LAW, § 24.

Right of person performing forced labor to recover for negligence of co-worker: see 4 Ann. Cas. 479 note.

Necessary work in prisons on Sundays and legal holidays.— Necessary cooking, kitchen work and similar work which must be done every day in prisons may legally be done on Sundays and legal holidays by prisoners who freely and voluntarily consent to do such work. Op. Atty.-Gen. (1911) 613.

Employment in road construction by prisoners in county penitentiary.— By virtue of the present section prisoners confined in a county penitentiary cannot be employed more than eight hours per day in road construction. Op. Atty.-Gen. (1912) 96.

Labor on Saturday half-holiday.— The law (L. 1897, ch. 614) which declares Saturday afternoon to be a half-holiday, and closes public offices during that period, does not apply to the penal institutions of the state, in reference to the labor of prisoners. Op. Atty.-Gen. (1897) 272.

Legality of sentence "at hard labor," for petit larceny.— In view of the provision of the present section that all prisoners, physically fit, in state prisons and reformatories shall be employed at hard labor eight hours a day, a judgment convicting a defendant of petit larceny is not illegal and excessive because it includes a provision that he be imprisoned "at hard labor." People v. Platt, (1911) 148 App. Div. 579, 132 N. Y. S. 939.

§ 172. Labor of prisoners of first grade, how directed. The labor of the prisoners of the first grade in each of said prisons, reformatories and penitentiaries, shall be directed with reference to fitting the prisoner to maintain himself by honest industry after his discharge from imprisonment, as the primary or sole

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object of such labor, and such prisoners of the first grade may be so employed at hard labor for industrial training and instruction solely, even though no useful or salable products result from their labor, but only in case such industrial training or instruction can be more effectively given in such manner. Otherwise, and so far as is consistent with the primary object of the labor of prisoners of the first grade as aforesaid, the labor of such prisoners shall be so directed as to produce the greatest amount of useful products, articles and supplies needed and used in the said institutions, and in the buildings and offices of the state, or those of any political division thereof, or in any public institution owned or managed and controlled by the state or any political division thereof, or said labor may be for the state, or any political division thereof.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 99, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

§ 173. Labor of prisoners of second grade, how directed. The labor of prisoners of the second grade in said prisons, reformatories and penitentiaries shall be directed primarily to labor for the state or any political division thereof, or to the production and manufacture of useful articles and supplies for said institutions, or for any public institution owned or managed and controlled by the state, or any political division thereof.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 100, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

§ 174. Labor of prisoners of third grade, how directed. The labor of prisoners of the third grade shall be directed to such exercise as shall tend to the preservation of health, or they shall be employed in labor for the state, or a political division thereof, or in the manufacture of such useful articles and supplies as are needed and used in the said institutions, and in the public institutions owned or managed and controlled by the state, or any political division thereof.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 101, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

§ 175. Prisoners employed for use of state, and divisions thereof. All convicts sentenced to state prisons, reformatories and penitentiaries in the state, shall be employed for the state, or a

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political division thereof, or in productive industries for the benefit of the state, or the political divisions thereof, or for the use of public institutions owned or managed and controlled by the state, or the political divisions thereof, which shall be under rules and regulations for the distribution and diversification thereof, to be established by the state commission of prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 102, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

Newspaper publication of pictures and drawings by convicts.— The statute does not prohibit the publication of drawings or pictures made by convicts, and the superintendent of prisons, in his discretion, may permit such publication. Op. Atty.-Gen. (1897) 288.

§ 176. No printing or photo-engraving to be done by prisoners for use of state. No printing or photo-engraving shall be done in any state prison, penitentiary or reformatory for the state or any political division thereof, or for any public institution owned or managed and controlled by the state or any such political division, except such printing as may be required for or used in the penal and state charitable institutions, and the reports of the state commission of prisons and the superintendent of prisons, and all printing required in their offices.

This section was derived from L. 1898, ch. 645, § 1.

Making books for the blind.— It is a violation of the present section to permit convicts in a state prison to make books with raised letters, to be loaned by the authorities of the state library to blind citizens of the state. Op. Atty.-Gen. (1900) 247.

§ 177. Labor of prisoners in prisons, reformatories, [1]penitentiaries and county jails.[2] The labor of the convicts in the state prisons and reformatories in the state, after the necessary labor for and manufacture of all needed supplies for said institutions, shall be primarily devoted to the state and the public buildings and institutions thereof, and the manufacture of supplies for the state, and public institutions thereof, and secondly to the political divisions of the state, and public institutions thereof; and the labor of the convicts in the penitentiaries, workhouses and county jails[3] after the necessary labor for and manufacture of all needed supplies for the same, shall be primarily devoted to the counties, respectively, in which said penitentiaries, workhouses or county

[1] Word "and" omitted.
[2] Inclusion of county jails new.
[3] Inclusions of workhouses and county jails new.

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jails[1] are located, and the towns, cities and villages therein, and to the manufacture of supplies for the public institutions of the counties, or the political divisions thereof, and secondly to the state and the public institutions thereof, [2]provided, however, that for the purpose of disposing of the whole or any part of the product of any penal institution in the state, other than said state prisons and state reformatories, to the state or to any political divisions thereof or to any public institutions owned or managed and controlled by the state, or by any political division thereof, the managing authority of any such penal institution and the state superintendent of prisons may enter into a contract or contracts which may determine the kinds and qualities of articles to be produced by such institution and the method of distribution and sale thereof by the state superintendent of prisons or under his directions, either in separate lots or in combination with the products of other such institutions and with the products of state prisons and may fix and determine any and all terms and conditions for the disposition of such products of such institutions and the disposition of proceeds of sale thereof and any and all other terms and conditions as may be agreed upon, not inconsistent with the constitution, provided, however, that no such contract shall be for a period of more than five years and that any prices fixed by such contracts shall be the current prices fixed by the state board of classification for like articles or shall be approved by the state board of classification on presentation to it of a copy of such contract or proposed contract, and provided further that any distribution or diversification of industries provided for by such contract shall be in accordance with the rules and regulations established by the state commission of prisons or shall be approved by the state commission of prisons on presentation to it of a copy of such contract or proposed contract. Provided, furthermore, that no product manufactured in whole or in part by or in any penal institution of the state or of a political division thereof, shall be sold, or otherwise disposed of for profit, by any officer, or administrative body, of such institution, or by any officer, or administrative body of the state, or of a political division thereof, except to the state itself or to a political division thereof, or to an officer or administrative body of the state, or of a political division thereof, or to or for a public institution owned

[1] Words "workhouses or county jails" new.
[2] Remainder of section new.

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or managed and controlled by the state or by any political division thereof; and in no case shall said products be purchased for the purpose of resale or for their disposition for profit in a manner not herein provided for in the first instance. A violation of any of the foregoing provisions shall constitute sufficient cause for the removal of such officer or board of administration by the duly constituted authority having jurisdiction.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 103, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1. It was amended to read as above by L. 1915, ch. 282, § 1. The amendments are shown in the footnotes.

Validity of statutes providing for particular kind of employment for convicts: see Ann. Cas. 1915C 976 note.

§ 178. Labor of prisoners in certain institutions. The state board of managers of reformatories, and the managing authorities of all the penitentiaries or other penal institutions in this state, are hereby authorized and directed to conduct the labor of prisoners therein, respectively, in like manner and under like restrictions, as labor is authorized by sections one hundred and seventy and one hundred and seventy-one of this article, to be conducted in state prisons.

This section was derived from L. 1889, ch. 382, § 3, as amended by L. 1896, ch. 429, § 3.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 96, in connection with the construction of section 171. See supra, § 171 note.

The statute embodying the present section was cited in Op. Atty.-Gen. (1889) 303; Matter of Simis, (1896) 11 App. Div. 24, 42 N. Y. S. 282.

§ 179. Employment of convicts on public highways. The superintendent of state prisons may employ or cause to be employed the convicts confined in the state prisons in the repair of state and county highways at any place within the state upon request of the state commission of highways, the construction or improvement of state or county highways constructed or improved by any board of supervisors or town board under a contract with such commission of highways, upon request as provided in section one hundred and thirty-one of the highway law, and also in the improvement or repair of any other public highway. The expense of maintenance of such convicts while employed in repairing a state or county highway shall be borne by the state and paid by the state commission of highways, in the same manner as other expenses in repairing such highways.

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The agent and warden of each prison may make such rules as he may deem necessary for the proper care, custody and control of such prisoners while so employed, subject to the approval of the superintendent of state prisons.

The agent and warden of each prison may designate, subject to the approval of the superintendent of state prisons, the highways and portions thereof upon which such labor shall be employed; and such portions so designated and approved, except portions of a state or county highway, shall be under his control during the time such construction, improvements or repairs are in progress, and the state highway commission shall fix the grade and width of the roadway of any such highway, and direct the manner in which the work shall be done.

A state or county highway herein referred to is a state or county highway as defined in the highway law.

The superintendent of state prisons is hereby authorized to purchase any machinery, tools and materials necessary in such employment, except employment on a state or county highway.

This section was derived from L. 1894, ch. 266, §§ 1–4. It was amended to read as above by L. 1914, ch. 60, § 2. Previous to the amendment the number of convicts to be employed on highways was limited to 300 from each state prison, and the labor was to be performed within a radius of 30 miles from the prison and outside of an incorporated city or village.

Application for services of prisoners and highways: see HIGHWAY LAW, § 70; COUNTY LAW, § 93.

Increase of hours of labor.— No increase in the hours of labor is authorized when convicts are employed upon highway construction. Op. Atty.-Gen. (1912) 96.

As to hours of labor in prisons, see supra, § 171.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 60, in connection with the construction of section 1694 of the Penal Law relating to prisoner escaping.

§ 180. Persons interfering with convicts employed on highways guilty of misdemeanor. Any person interfering with or in any way interrupting the work of any convict employed pursuant to this article upon the public highways, or any person giving or attempting to give any intoxicating liquors, beer, ale or other spirituous beverage to any state prison convict so employed, shall be guilty of a misdemeanor. Any officer or guard of any state prison having in charge the convicts employed upon such highways, may arrest without a warrant any person violating any provision of this section.

This section was derived from 1894, ch. 266, § 5, as added by L. 1894, ch. 664, § 1.

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§ 181. Classification of industries; report as to industries. It shall be the duty of the superintendent of state prisons to distribute, among the penal institutions under his jurisdiction, the labor and industries assigned by the commission to said institutions, due regard being had to the location and convenience of the prisons, and of the other institutions to be supplied, the machinery now therein and the number of prisoners, in order to secure the best service and distribution of the labor, and to employ the prisoners, so far as practicable, in occupations in which they will be most likely to obtain employment after their discharge from imprisonment; to change or dispose of the present plants and machinery in said institutions now used in industries which shall be discontinued, and which can not be used in the industries hereafter to be carried on in said prisons, due effort to be made by full notice to probable purchasers, in case of sales of industries or machinery, to obtain the best price possible for the property sold, and good will of the business to be discontinued. The superintendent of state prisons shall annually cause to be procured and transmitted to the legislature, with his annual report, a statement showing in detail the amount and quantity of each of the various articles manufactured in the several penal institutions under his control and the labor performed by convicts therein, and of the disposition thereof.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 104, as amended by L. 1889, ch. 382; L. 1896, ch. 429, § 1.

§ 182. Articles manufactured to be furnished to the state or division thereof. The superintendent of state prisons, and the superintendents of reformatories and penitentiaries, respectively, are authorized and directed to cause to be manufactured by the convicts in the prisons, reformatories and penitentiaries, such articles as are needed and used therein, and also such as are required by the state or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the state, including articles and materials to be used in the erection of the buildings. All such articles manufactured in the state prisons, reformatories and penitentiaries, and not required for use therein, shall be of the styles, patterns, designs and qualities fixed by the board of classification, and may be furnished to the state, or to any political division thereof, or for

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or to any public institution owned or managed and controlled by the state, or any political division thereof, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No article so manufactured shall be purchased from any other source, for the state or public institutions of the state, or the political divisions thereof, except uniforms for the inmates of the New York State Soldiers and Sailors' Home or of the New York State Women's Relief Corps Home, unless said state commission of prisons shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 105, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1; L. 1903, ch. 447, § 2. It was amended to read as above by L. 1916, ch. 533. This amendment added to the last paragraph the words, "except uniforms for the inmates of the New York State Soldiers and Sailors' Home or of the New York State Women's Relief Corps Home."

Validity of statute requesting goods made by convicts to be so marked: see Ann. Cas. 1913B 817 note.

Purchase of supplies for alms-houses.— By virtue of the present section purchases of goods for use in alms-houses must be made from the authorities of penal institutions so far as such goods can be supplied. Op. Atty.-Gen. (1897) 140.

Northern New York Institution for Deaf Mutes as within statute.— The Northern New York Institution for Deaf Mutes at Malone is not a "public institution" within the meaning of the present section, regulating the disposal of prison-made goods, since it is neither owned nor managed by the state. Op. Atty.-Gen. (1897) 88.

New York State School for the Blind as within statute.— The New York State School for the Blind at Batavia is a "public institution," and hence subject to the provisions of the statute concerning the products of convict labor. Op. Atty.-Gen. (1897) 88.

School desks as articles to be purchased from prisons.—A school district is a political division of the state, and school desks are a necessary part of the equipment of schoolhouses and must be included in the articles required by the statute to be purchased from penal institutions. Op. Atty.-Gen. (1913) 299; Op. Atty.-Gen. (1897) 316.

Purchase of military and naval supplies.— Military and naval stores must not be purchased from prisons. Such purchases are governed by the Military Code. Op. Atty.-Gen. (1899) 155.

It was otherwise prior to the adoption of the Act of 1898 (§ 170, Military Law). See Op. Atty.-Gen. (1897) 263.

As to purchase of military and naval supplies, see MILITARY LAW, § 170.

It has been decided that lockers and furniture for the use of state armories must be purchased from state's prisons, unless the commission of prisons certifies that they cannot be furnished. Op. Atty.-Gen. (1899) 373.

As to armories generally, see Military Law, §§ 175 et seq.

Effect of local statutes relative to the purchase of materials.— Local statutes relative to the purchase of materials in municipalities of the state do not supersede the provisions of the present section requiring municipalities to

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purchase necessary goods and materials which are manufactured in the prisons of the state. Op. Atty.-Gen. (1913) 563.

Liability for purchasing materials elsewhere than from state prisons.— If articles to be used in any of the political divisions of the state are bought elsewhere than from the state prisons without the certificate of the commission of prisons showing inability to furnish the goods required, the officers making the purchases or auditing claims therefor are criminally liable under sections 29, 1866 and 1937 of the Penal Law, and are also liable to a taxpayer's action under section 51 of the General Municipal Law.

Delegation of duty of certification to secretary of prison commission.— The commission of prisons cannot delegate its duty in regard to the certification required by the present section to its secretary. Op. Atty.-Gen. (1897) 336.

Claims for materials furnished by prisons as barred by the statute of limitations.— The statute of limitations may be pleaded against the state in an action brought by it to enforce the payment of claims for supplies furnished by its penal institutions to municipalities or state departments. Op. Atty.-Gen. (1908) 458.

Cited.— The statute embodying the present section was cited in Op. Atty.-Gen. (1897) 91.

§ 183. Estimates of articles required to be furnished commission of prisons by officers. On or before October first in each year, the proper officials of the state, and the political divisions thereof, and of the institutions of the state, or political divisions thereof, shall report to the said commission of prisons estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can be furnished by the penal institutions in the state. The said commission is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in said penal institutions.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 106, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

Cited.— This section was cited in Op. Atty.-Gen. (1911) 524, in connection with the question of penalties for noncompliance with the statutory provisions with reference to purchases of goods by municipal and state officials. See supra, § 182 note.

§ 184. Board of classification; prices to be fixed. The fiscal supervisor of state charities, the state commission of prisons, and the superintendent of state prisons and the lunacy commission are hereby constituted a board to be known as the board of classification. Said board shall fix and determine the prices at which all labor performed, and all articles manufactured in the charitable institutions managed and controlled by the state and in the penal institutions in this state, and furnished to the state, or the

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political divisions thereof, or to the public institutions thereof, shall be furnished, which prices shall be uniform to all, except that the prices for goods or labor furnished by the penitentiaries to or for the county in which they are located, or the political divisions thereof, shall be fixed by the board of supervisors of such counties, except New York and Kings counties, in which the prices shall be fixed by the commissioners of charities and correction, respectively. The prices shall be as near the usual market price for such labor and supplies as possible. The state commission of prisons shall devise and furnish to all such institutions a proper form for such requisition, and the comptroller shall devise and furnish a proper system of accounts to be kept for all such transactions. It shall also be the duty of the board of classification to classify the buildings, offices and institutions owned or managed and controlled by the state, and it shall fix and determine the styles, patterns, designs and qualities of the articles to be manufactured for such buildings, offices and public institutions, in the charitable and penal institutions in this state. So far as practicable, all supplies used in such buildings, offices and public institutions shall be uniform for each class, and of the styles, patterns, designs and qualities that can be manufactured in the penal institutions in this state.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 107, as amended by L. 1889, ch. 382, § 1; L. 1895, ch. 473, § 1; L. 1896, ch. 429, § 1; L. 1897, ch. 623, § 1; L. 1901, ch. 418, § 1; L. 1903, ch. 447, § 3.

Price fixing by board of classification.— The legislature appears to have conferred on the board of classification the discretion of determining what prices should be paid to the prison department for labor and supplies furnished to some other department of the state, and the only limit upon their discretion is that the prices fixed shall be as near the market prices as possible. Op. Atty.-Gen. (1903) 433.

§ 184-a. Farm products of penal institutions to be furnished to other institutions. Farm products used by any state charitable institution or state hospital, in excess of those produced by such institution or hospital, shall be obtained from state prisons, reformatories and penitentiaries having or producing a surplus of such products, unless it be more advantageous to the state to obtain such products elsewhere, regard being had to prices, quality, distance and to the time and manner of transportation and delivery. Such products shall be furnished on the requisition of the purchasing authorities of the institution or hospital, paid for

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as other supplies for such institution or hospital and the moneys received and applied by the prison, reformatory or penitentiary where paid in same manner as moneys for other products of convict labor. The superintendent of state prisons and state superintendents of reformatories and penitentiaries, where farm products are purchased, shall from time to time transmit to the managers or trustees of the several state hospitals and state charitable institutions statements of surplus farm products available for sale, together with prices therefor and conditions of transportation and delivery.

New. Added by L. 1915, ch. 457.

§ 185. Earnings of prisoners. Every prisoner confined in the state prisons, reformatories and penitentiaries, and every prisoner serving sentence in the county jails, may, in the discretion of the managing authority of said institution, receive compensation from the earnings of the institution in which he is confined, such compensation to be graded by such managing authority for the time such prisoner may work, but in no case shall the compensation allowed to such convicts exceed in amount ten per centum of the earnings of the institution in which they are confined; provided, however, that any compensation in excess of one and one-half cents per day shall be based upon an amount of work or labor performed by him at his option in excess of a given amount fixed for him to perform for the benefit of the state, or political subdivision thereof, and in such case his compensation may, in the discretion of such managing authority, be a sum equal to the value of the additional work or labor so performed or to the value of the product or portion thereof produced by such additional work or labor, except that his total compensation shall not in any case exceed the amount of twenty cents a day. The difference in the rate of compensation shall be based both on the pecuniary value of the work performed, and also on the willingness, industry and good conduct of such prisoner; provided, that whenever any prisoner shall forfeit his good time for misconduct or violation of the rules or regulations of the prison, reformatory, penitentiary or county jail, he shall forfeit out of the compensation allowed under this section such an amount as may be determined by the managing authority of any such institution, not to exceed twenty-five cents for each day of good time so forfeited. The managing

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authority of any such institution may institute and maintain a uniform system of fines, to be imposed at his discretion, in place of his other penalties and punishments, to be deducted from such compensation standing to the credit of any prisoner, for misconduct by such prisoner.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 108, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1. It was amended to read as above by L. 1914, ch. 188, § 1, and L. 1915, ch. 288, § 1.

§ 186. Disposition of fines. All moneys received for fines under this chapter, from prisons and reformatories, shall be credited to a general fund, and be disbursed by direction of the superintendent of prisons, for special aid to discharged prisoners who are infirm, indigent, or in any way incapable, to an unusual degree, of earning a sufficient subsistence after their release, and all moneys received for fines imposed under this article by the superintendents of penitentiaries, shall be credited to a general fund and be disbursed by direction of the board of supervisors of the counties in which they are located, except that in the counties of New York and Kings they shall be disbursed by direction of the commissioners of charities and correction.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 109, as amended by L. 1889, ch. 382, § 1, as amended by L. 1896, ch. 429, § 1.

§ 187. Disposition of moneys paid to prisoner for his labor. The amount of such surplus standing on the books of the prison to the credit of any prisoner may be drawn by the prisoner during his imprisonment, only upon the certified approval of the superintendent of state prisons for disbursement by the agent and warden of said prison or superintendent of said reformatory to aid dependent relatives of such prisoner, or for such other purposes as the superintendent of state prisons may approve, or may with the approval of the said superintendent of state prisons be so disbursed without the consent of such prisoner. And any balance to the credit of any prisoner at the time of his conditional release as provided by this article, shall be subject to the draft of the prisoner in such sums and at such times as the superintendent of state prisons shall approve; but at the date of the absolute discharge of any prisoner the whole amount of credit balance as aforesaid shall be subject to his draft at his pleasure. Provided,

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that any prisoner violating his conditional release, when the violation is formally declared by the board of parole for state prisons, or by the board of managers of said reformatory, shall thereby forfeit any credit balance; and the amount thereof shall be transferred to the fund in aid of discharged prisoners, as herein provided for fines imposed, except such portion thereof as may be applied to pay the expense of his recapture as hereinbefore provided.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 110, as amended by L. 1889, ch. 382, § 1.

Cited.— This section was cited in Op. Atty.-Gen. (1915) 317, in connection with the construction of section 125. See supra, § 125 note.

§ 188. Monthly statement of receipts and expenditures for prison industries. The agent and warden of each of the state prisons shall, on the first of each month, make a full detailed statement of all materials, machinery or other property procured, and of the cost thereof, and of the expenditures made during the last preceding month for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured, and of machinery, fixtures or other appurtenances for the purpose of carrying on the labor of the prisoners, and the amount and kinds of work done, and the earnings realized, and the total amount of moneys coming into his hands as such agent and warden during such last preceding month as the proceeds of the labor of the prisoners at such prison, which statement shall be verified by the oath of such agent and warden to be just and true, and shall be by him forwarded to the superintendent of state prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 111, as amended by L. 1889, ch. 382, § 1.

§ 189. Statement of machinery and materials required. Such agent and warden shall also on the first day of each month, make an estimate and detailed statement of all materials, machinery, fixtures, tools or other appurtenances or accommodations, and of the cost thereof, which will, in his judgment, be necessary for carrying on the labor of the prisoners at such prison, both for the purposes of production, and of industrial training and education, for the next ensuing month, or which, in his judgment, should be contracted for during such month, which estimate shall

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be forwarded to the superintendent of state prisons, who may revise the same by reducing the amount thereof, and he shall certify that he has carefully examined the same, and that the article contained in said estimate as so revised by him, are actually required for the use of the prison, and he shall thereupon deliver the said estimate so certified to the comptroller.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 112, as amended by L. 1889, ch. 382, § 1; L. 1896, ch. 429, § 1.

§ 190. Machinery and materials for prison industries, how purchased. The agents and wardens of the state prisons with the approval of the superintendent of state prisons and the manager or other authorities by whatever name known having charge of the penal institutions of the state are authorized within the appropriations which may be placed at their disposal by the state or by the county supporting such institutions to procure and maintain all necessary machinery, tools, apparatus or accommodations needful for the purpose of carrying on and conducting such trades and industries as may be authorized under the provisions of this article. They shall purchase material in manner following: All purchases and contracts for the material to be used in the manufacture of goods in the state prisons and other penal institutions of the state shall be made by advertising for sealed proposals except when in the judgment of the superintendent of state prisons it is for the best interest of the state to purchase the same in the open market. Whenever proposals for furnishing materials have been solicited the parties responding to said solicitations shall be duly notified of the time and place of opening the bids and may be present either in person or by attorney and a record of each bid shall then and there be made. They shall advertise for said proposals or bids daily for at least two weeks in one newspaper published in the city of Albany and two newspapers published in the city of New York, specifying the classes and quantity of material required, and furnish bidders on demand with printed schedules giving a full description of all of the materials required, with date and place of delivery and all other necessary information. The person offering to furnish said materials upon terms most advantageous to the state, and who will give satisfactory security for the performance thereof, in case immediate delivery is not required, shall receive the contract to furnish said materials,

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unless the superintendent of state prisons shall deem it to the best interests of the state to decline all proposals and advertise anew.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 113, as amended by L. 1889, ch. 382, § 1.

Prison officers not to be interested in prison contracts: see PENAL LAW, § 1828.

§ 191. Disposition of machinery on discontinuance of industry. Whenever any trade or industry is discontinued and it appears to the satisfaction of the agent and warden of any state prison that the said trade or industry will not again be put in operation and continued at said prison, he must report that fact to the superintendent of state prisons and the state comptroller, and at the same time furnish each with a schedule of the machinery, tools, apparatus and other appurtenances belonging to the said trade or industry or used in connection therewith, and an inventoried value of same, and also the quantity and value of the stock and manufactured product of such trade or industry then on hand, and said agent and warden shall, with the approval of the said superintendent of state prisons and comptroller, sell and dispose of all such unused and unnecessary machinery, tools, apparatus, stock and manufactured product. Said property shall be sold at public auction to the highest bidder, after public notice has been given of the intended selling thereof by advertising the time and place of holding the sale daily for at least two weeks in one newspaper published in the city of Albany, one newspaper published in the city of New York, and one newspaper published in the city or town in which the prison where said sale is to take place, is situated, or if there be no newspaper published in said city or town, then in a newspaper published in the city or town nearest to said place where such prison is located, and the agent and warden of any state prison where such sale is to be held shall furnish any person applying therefor with a printed schedule of the property to be sold, giving a full and complete description of same, the terms of the sale and all other necessary information. Any moneys received from such sale as aforesaid, after deducting all necessary and actual expenses, shall be deposited by the agent and warden of such prison to the credit of the prison capital fund thereof.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 113a, as added by L. 1908, ch. 251, § 1.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 126.

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§ 192. Purchases to be included in estimates. The agent and warden of each prison shall make purchases of the articles included in the estimate so certified to the comptroller, as directed in section one hundred and ninety, and it shall not be lawful for such agent and warden to make any purchases and contracts on behalf of the state for the industrial purposes of such prison unless such purchases and contracts shall have been included in such estimate filed with the comptroller.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 114, as amended by L. 1889, ch. 382, § 1; as amended by L. 1896, ch. 429, § 1.

Purchase of manufactured articles for combination with other articles.—The prison authorities may purchase articles already manufactured for the purpose of combining the same with other articles required for the use of a municipality. Op. Atty.-Gen. (1897) 151.

§ 193. Deposits by agent and warden in banks. The comptroller shall designate a bank or banks convenient to each of said prisons for receiving deposits from the agent and warden of such prison of all moneys coming to his hands as proceeds of the labor of the prisoners and of the sales of articles manufactured by them therein. Before any such deposit shall be made by such agent and warden or received by any such bank such bank shall execute and file with the comptroller a bond in such penal sum, with such sureties and upon such conditions as shall be approved by the comptroller. The agent and warden of each of said prisons shall deposit, at least once in each week, in the bank or banks so designated by the comptroller, all the moneys received by him as proceeds of the labor of the prisoners, to his credit as such agent and warden, and shall send to the comptroller, and also to the superintendent of state prisons, weekly, a statement showing the amounts so received and deposited, and when, from whom and for what received, and the days on which such deposits were made, which statement shall be certified by the proper officer of each bank receiving such deposits, and shall also be verified by the oath of such agent and warden, to the effect that the sum so deposited includes all the moneys received by him as the proceeds of the labor of the prisoners in said prison and of the sales of the articles manufactured by them during such week and up to the time of the last deposit appearing on such statement. The moneys so deposited by such agent and warden shall be subject to his check

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or draft only when countersigned by the comptroller. The comptroller shall countersign such check or draft only when the same is drawn for the payment of an expenditure included in an estimate approved by the superintendent of state prisons. In case the balance of such deposits in any such bank shall at any time, in the judgment of the comptroller, be in excess of the amount which will be needed to meet the expenses of such prison, the comptroller shall notify the treasurer of the state and also the said bank of the amount of such excess, which amount shall be added by such treasurer to the prison fund in the treasury of the state, and shall be thereafter payable by said bank upon the draft of the said treasurer only. It shall be the duty of the comptroller at the commencement of each annual session of the legislature, to report the financial condition of each of the prisons under the control of the superintendent of prisons. Such report shall state the amount and value of unmanufactured material on hand, the amount and value of manufactured goods unsold, the amount and value of goods sold but not paid for and the amount of money remaining on deposit in each bank in which funds are deposited as provided by this section, such losses as may occur from time to time, and also such other information as he shall deem proper relating to the manufacturing industries of the prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 115, as amended by L. 1889, ch. 382, § 1.

Funds from sales.— Money derived from a sale of horses originally estimated and paid for from the capital fund of a prison may be turned into that fund. Op. Atty.-Gen. (1912) 126.

§ 194. Violations of prison labor regulations. Any contract made by the superintendent or agent and warden of any prison, or by any officer or any other authority whatsoever, of any prison, reformatory, penitentiary or other penal institution of this state, in violation of, or contrary to, the provisions of this article, shall be null and void. It shall be the duty of any such officer or authorities to furnish to the attorney-general, upon demand therefor, a true copy, if in writing, and if not, in substance, of any contract made by such officer or authorities, relating in any way to the system of labor adopted, or to the employment of prisoners in any of said prisons, reformatories, penitentiaries or other penal institutions. Whenever the attorney-general shall be satisfied that

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any contract made as aforesaid is contrary to or in violation of this article, or that any of the officers or authorities aforesaid have entered into or are engaged in any contract or arrangement for the labor of prisoners, or relating to the system adopted or continued in said institutions, which contract or arrangement is contrary to or in violation of law as aforesaid, if he shall be of the opinion that the facts require such action, he is hereby authorized to bring an action in the supreme court in the name of the people of the state of New York, in any county which he may select, for the purpose of testing the validity of any contract or arrangement made by any of the officers herein named, relating in any way to the system of labor adopted, or the employment of prisoners in any of said prisons, reformatories, penitentiaries or other penal institutions, or to determine the validity of any act or thing done by any officer herein mentioned, which act or thing shall be alleged to have been in violation of this article. Any party to such contract, agreement or arrangement as aforesaid, or interested in the determination of such action, shall be made defendant, and pending the trial or hearing of the facts alleged, or of any issue made as aforesaid, the court shall, upon notice of the attorney-general, and upon a petition duly verified showing the making of any contract or arrangement in violation of the provisions of this article, or the doing of any act or thing by any of the parties defendant, in violation of this article, grant an injunction order, restraining the parties named in said order from the further prosecution of the business complained of, or from the further performance of the contract or arrangement claimed to have been entered into as aforesaid, and to restrain and enjoin such officer from the further continuance of any act alleged to be in violation of this article. And any disobedience of such injunction order shall be punishable as provided by article nineteen of the judiciary law. And upon any trial had, judgment shall follow the findings of fact made by the court or jury, as in other cases, and with costs, in the discretion of the court.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 117, as added by L. 1890, ch. 559, § 1, and amended by L. 1889, ch. 382, § 1.

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ARTICLE 8

PAROLES

Section 210. Board of parole for state prisons; parole officers.
211. Prisoners subject to parole. [*Title as inserted by editors.*]
211-a. Parole of certain indeterminates.
212. Meetings of board; applicants for parole or discharge.
213. Biographical record of prisoners on indeterminate sentence.
214. Release on parole of prisoners on indeterminate sentence.
215. Warrant for arrest of paroled prisoner.
216. Officer may arrest prisoner.
217. Appearance of recaptured paroled prisoner before parole board; imprisonment after delinquency.
218. Absolute discharge of paroled prisoner.
219. Not to affect governor's powers to pardon or commute.

§ 210. Board of parole for state prisons; parole officers. There shall be a board of parole for state prisons of three members to consist of the superintendent of prisons, and two members to be appointed by the governor, by and with the advice and consent of the senate. This board shall have all the powers and perform all the duties now devolving by law upon the board of commissioners for paroled prisoners for the state prisons. It shall adopt a uniform system of marking prisoners by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release by parole, which system shall be subject to revision from time to time. It shall also be its duty to make examination and report to the governor with its recommendations on all applications for pardon referred to it by the governor. The members of said board other than the superintendent of prisons shall receive for their services an annual salary of not to exceed three thousand six hundred dollars each and shall hold office for a term of five years from the time of their appointment. They shall also receive their necessary expenses actually

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incurred in the discharge of their official duties. In case of the absence or disability of the superintendent of prisons he may deputize his chief clerk to represent and act for him at any meeting of said board. Each agent and warden shall appoint a parole officer for the prison of which he is in charge. It shall be the duty of such officers to aid paroled prisoners in securing employment and to visit and exercise supervision over them while on parole and they shall have such authority and perform such other duties as the board of parole may direct. The salary of each parole officer shall not exceed twelve hundred dollars per annum, which together with his actual and necessary traveling expenses shall be payable from the maintenance fund of the prison to which he is assigned.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 75, as amended by L. 1889, ch. 382, § 1; L. 1901, ch. 260, § 1; L. 1907, ch. 467, § 1. It was amended to read as above by L. 1910, ch. 703, § 1. The amendment changed salary of the members of the board which formerly was $1,800.

State probation commission: see STATE BOARDS AND COMMISSIONS LAW, §§ 30, 31.

Constitutionality of statutes establishing parole system: see L. R. A. 1915F 531 note. *Prisoner under parole as fugitive subject to extradition:* see 51 L. R. A. (N. S.) 672 note. *Continued paroles:* see 14 L. R. A. 286.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 136; Op. Atty.-Gen. (1911) 689.

§ 211. Prisoners subject to parole. Every person confined in a state prison, or reformatory, under sentence for a definite term for a felony, who has never before been convicted of a crime punishable by imprisonment in a state prison, shall be subject to the jurisdiction of the board of parole for state prisons and may be paroled in the same manner and subject to the same conditions and penalties as prisoners confined under indeterminate sentences. The minimum and maximum terms of the sentences of said prisoners are hereby fixed and determined to be as follows: The definite term for which each person is sentenced shall be the maximum limit of his term and if the definite term for which the person is sentenced is two years or less the minimum limit of his term shall be one year. If the definite term for which the person is sentenced is more than two years, one-half of the definite term of his sentence shall be the minimum limit of his term. Such minimum term and minimum term fixed by an indeterminate sentence shall, for the purpose of such

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parole, be subject to further diminution on account of compensation earned as provided in article nine of this chapter.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 74, as amended by L. 1889, ch. 382, § 1; L. 1901, ch. 260, § 1; L. 1902, ch. 500, § 1. The section was amended by L. 1909, ch. 240, § 63; L. 1909, ch. 489; L. 1916, ch. 358, § 1. The amendment by L. 1916, ch. 358, § 1, added the last sentence to the section.

Indeterminate sentences to state prisons: see PENAL LAW, § 2189.

Calculating term of imprisonment: see PENAL LAW, § 2193.

Suspended sentence on previous conviction.—A convict under sentence for a definite terms for felony, who has been previously convicted of felony and sentence suspended, is not eligible for parole. Op. Atty.-Gen. (1913) 524; Op. Atty.-Gen. (1909) 811.

Parole of prisoner previously sentenced in federal court.— One who has been convicted and sentenced to a federal prison is not entitled to parole upon a subsequent conviction in a state court. Op. Atty.-Gen. (1913) 592; Op. Atty.-Gen. (1909) 808.

Parole of life prisoner whose sentence has been commuted.—One who has been sentenced to life imprisonment and has had his sentence commuted by the governor to twenty-five years, subject to commutation from the date of his sentence, is eligible for parole under the present section. Op. Atty.-Gen. (1909) 803.

Prisoner serving under indeterminate and definite sentences.— It has been ruled that a prisoner confined under an indeterminate and a definite sentence for separate crimes is not entitled to parole. Op. Atty.-Gen. (1913) 315; Op. Atty.-Gen. (1910) 383; Op. Atty.-Gen. (1909) 819. See also Op. Atty.-Gen. (1912) 41.

Prisoner convicted of felony in another state.— A prisoner serving a sentences in this state who has been previously convicted in another state of a crime punishable by imprisonment in a state prison, is not entitled to parole. Op. Atty.-Gen. (1909) 815.

Pardon of previous felony as affecting status of prisoner.— The pardon of a prisoner of a previous felony does not alter his status as a second offender and entitle him to parole. Op. Atty.-Gen. (1912) 121.

Definite sentence as fixing status of convict.— It has been ruled that since the statute providing for indeterminate sentences for first offenders became mandatory the imposition of a definite sentence is a judicial determination that the convict is a second offender, and therefore not eligible for parole. Op. Atty.-Gen. (1915) 288.

Parole of prisoner sentenced to death whose sentence has been commuted.—A prisoner originally sentenced to death whose sentence has been commuted to life imprisonment by the governor is not eligible for parole. Op. Atty.-Gen. (1913) 160.

Prisoners previously convicted as minors.— Under the provisions of the Penal Law, § 2186, persons under sixteen years of age, not convicted of a capital crime or a crime punishable by life imprisonment, cannot be held guilty of a felony; hence prisoners who, as minors under sixteen years of age have committed offenses which if committed by an adult would be felonies, are entitled to the benefits of the present section of the statute. Op. Atty.-Gen. (1910) 902, modifying Op. Atty.-Gen. (1910) 901; Op. Atty.-Gen. (1909) 812.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 75; Op. Atty.-Gen. (1912) 136, in connection with the construction of section 218. See infra, § 218 note. The statute embodying the present section was cited in Op. Atty.-Gen. (1906) 267; Op. Atty.-Gen. (1902) 311, in connection with the construction of section 2189 of the Penal Law (formerly 687a, Penal Code). It was cited in People v. Johnson, (1906) 114 App. Div. 876, 100 N. Y. S. 256,

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in connection with the question as to the ex post facto effect of the statute (L. 1901, ch. 425, Penal Law, § 2189), making indeterminate sentences of first offenders compulsory.

§ 211-a. Parole of certain indeterminates. Each person confined in a state prison who has never before been convicted of a crime punishable by imprisonment in a state prison, having an indeterminate sentence whose minimum, unless fixed by law, is more than one-half of the maximum penalty prescribed by law for the crime of which he was convicted, or who may hereafter receive such sentence, shall, when he has served a period of time equal to one-half the maximum penalty prescribed by law for the crime of which he was convicted or when he has served such period less the time earned as compensation and deducted therefrom under the provisions of article nine of this chapter,[1] be subject to the jurisdiction of the board of parole for state prisons and said board shall have the same authority as to the parole and discharge of such prisoner that it would have had if the minimum sentence imposed by the court had been for a period equal to one-half the maximum penalty prescribed by law for the offense of which he was convicted, but no person shall be paroled who has served less than one year.

New. Added by L. 1910, ch. 669. It was amended to read as above by L. 1916, ch. 358, § 2. The amendments are shown in the footnote.

Parole of prisoner for whom there is warrant on file at prison.—A prisoner otherwise entitled to parole should not be refused a parole upon the ground that there is a warrant on file at the prison for him for the commission of a crime prior to the sentence under which he is serving. Op. Atty.-Gen. (1911) 689.

Scope of term "maximum penalty."—The term "maximum penalty" in the present section was intended to apply to the maximum term of imprisonment in state's prison and not to include a fine imposed at the time of sentence. Op. Atty.-Gen. (1910) 907. In applying the provision of the present section the maximum penalty prescribed by law at the time the crime was committed is to be considered, and not the maximum penalty at the time the section became a law. Op. Atty.-Gen. (1911) 195.

Imprisonment under two sentences.—A person confined under two sentences, the first indeterminate and the second definite, is not entitled to be paroled at the expiration of the minimum term of the first sentence so that he may immediately begin the service of the second sentence. Op. Atty.-Gen. (1912) 41; Op. Atty.-Gen. (1910) 383. See also Op. Atty.-Gen. (1913) 315; Op. Atty.-Gen. (1909) 819.

Parole on conviction for several offenses in same transaction.—A person never before convicted of a felony who has been charged in an indictment with the crimes of rape, second degree, assault, second degree, and abduction, and who has been convicted of such crimes and sentenced to an indeterminate term of imprisonment, is eligible to parole at the expiration of a term equal to one-half of the maximum penalty prescribed by law for the crime of which

[1] Words "or when he has served . . . article nine of this chapter," new.

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he has been convicted for which he might have been sentenced to imprisonment for the longest term. Op. Atty.-Gen. (1913) 184.

Parole of prisoner serving two indeterminate sentences for burglary and grand larceny.— A person convicted of the two crimes of burglary and grand larceny charged in the same indictment and arising out of the same transaction, who has received two indeterminate sentences for the commission of such crimes, is eligible to parole at the expiration of the minimum terms of such sentences. Op. Atty.-Gen. (1913) 51; Op. Atty.-Gen. (1910) 913. It has been ruled that where one is convicted of the crime of burglary, third degree, and of grand larceny, second degree, upon two separate counts in the same indictment arising from the same transaction, and is sentenced for a term of not less than four years nor more than five years, he is not entitled to parole until after he has served the minimum sentence of four years imposed by the court. Op. Atty.-Gen. (1911) 42.

§ 212. Meetings of board; applications for parole or discharge. A majority of the board of parole for state prisons shall constitute a quorum for the transaction of business and they shall meet at each of said prisons ten times each year upon dates to be fixed by them and at such other times and places as they may deem necessary. Each prisoner confined in the state prisons may one month prior to the expiration of the minimum term of his sentence, as fixed by law or imposed by the court, make application to the board, in writing and in such form as they may prescribe, for his release upon parole, or for an absolute discharge as hereinafter provided, and said board is hereby prohibited from entertaining any other form of application or petition for the release upon parole or absolute discharge of any prisoner. Where the minimum term of a prisoner shall be further diminished on account of compensation earned, as provided in article nine of this chapter, such prisoner may make such application either at the next meeting of the board after the prisoner has received notice of such diminution or at the first meeting of the board occurring after the expiration of ten days from the receipt of such notice.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 76, as amended by L. 1889, ch. 382, § 1; L. 1901, ch. 260, § 1; L. 1902, ch. 500, § 2; L. 1907, ch. 467, § 1. It was amended by L. 1910, ch. 703, § 2; L. 1916, ch. 358, § 3. The amendment by L. 1910, ch. 703, § 2, changed the times for meetings of the board from monthly to ten times in each year, and added the words "and at such other times and places as they may deem necessary" in place of the former words, "between April first and December first, excepting the month of August, and at such other times as they may deem necessary between December first and the following April first in each year." The amendment by L. 1916, ch. 358, § 3, added the words "as fixed by law or imposed by the court" in the first sentence, and added the last sentence in the section.

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Cited.—This section was cited in Gargan v. Sculley, (1913) 82 Misc. 667, 144 N. Y. S. 205. It was cited in Op. Atty.-Gen. (1912) 137, in connection with the construction of section 218. See infra, § 218 note.

§ 213. Biographical record of prisoners on indeterminate sentence. The superintendent of state prisons shall cause to be kept, at each state prison, a full and accurate record of each prisoner therein confined upon an indeterminate sentence, which record shall include a biographical sketch covering such items as may indicate the causes of the criminal character or conduct of the prisoner, and also a record of the demeanor, education and labor of the prisoner while confined in such prison; and whenever such prisoner is transferred from one prison to another, a copy of such record or an abstract of the substance thereof, together with the certified copy of the sentence of such prisoner, shall be transmitted with such prisoner to the prison to which he shall be transferred.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 77, as amended by L. 1889, ch. 382, § 1.

§ 214. Release on parole of prisoners on indeterminate sentence. If it shall appear to said board of parole for state prisons, upon an application by a convict for release on parole as hereinbefore provided, that there is reasonable probability that such applicant will live and remain at liberty without violating the law, then said board may authorize the release of such applicant upon parole, and such applicant shall thereupon be allowed to go upon parole outside of said prison walls and inclosure upon such terms and conditions as said board shall prescribe, but to remain, while so on parole, in the legal custody and under the control of the agent and warden of the state prison from which he is so paroled, until the expiration of the maximum term specified in his sentence as hereinbefore provided, or until his absolute discharge as hereinafter provided.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 78, as amended by L. 1889, ch. 382, § 1.

Indeterminate sentences to state prisons: see PENAL LAW, § 2189.

Calculating term of imprisonment: see PENAL LAW, § 2193.

Parole of prisoner to go out of state.—The board of parole may not parole a prisoner to go to a foreign country or to another state. Op. Atty.-Gen. (1909) 819.

Right of prisoner under parole to vote.—A prisoner on parole is still in legal custody and has not the right to either register or vote. Op. Atty.-Gen. (1905) 490. See ELECTION LAW, § 175.

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Parole of prisoner with cumulative sentence of fine.— Where a prisoner has been sentenced under an indeterminate sentence of one to five years, and in addition thereto to pay a fine or in default of payment to be committed to prison, the board of parole may parole him at the expiration of one year, as imprisonment in default of fine does not begin until the expiration of five years. Op. Atty.-Gen. (1903) 320.

Addition to parole period of time in substitution of fine imposed.—When a parole has been granted to a prisoner, the time in substitution of fine is to be regarded as a prolongation to that extent of the period of time during which he is on parole. Op. Atty.-Gen. (1906) 580.

Return of prisoner after expiration of term for violation of parole.—Where a prisoner while on parole has violated the conditions thereof, but no steps have been taken by the prison authorities to return him to prison to serve the remainder of his sentence, he cannot, after the expiration of the time of his maximum sentence, be returned to prison to serve any part of his sentence. Op. Atty.-Gen. (1913) 394.

Cited.— This section was cited in Gargan v. Sculley, (1913) 82 Misc. 667, 144 N. Y. S. 205. It was cited in Op. Atty.-Gen. (1913) 523, in connection with the construction of section 231. See infra, § 231 note. It was also cited in Op. Atty.-Gen. (1912) 41, in connection with the construction of section 211a. See supra, § 211a note. The section was cited in Op. Atty.-Gen. (1912) 137, in connection with the construction of section 218. See infra, § 218 note. It was cited in Op. Atty.-Gen. (1910) 887, in connection with the construction of section 217. See infra, § 217 note.

§ 215. Warrant for arrest of paroled prisoner. If the agent and warden of the prison from which such prisoner was paroled, or said board or any member thereof, shall have reasonable cause to believe that the prisoner so on parole has violated his parole and has lapsed or is probably about to lapse into criminal ways or company, then such agent and warden or said board, or any member thereof, may issue his warrant for the retaking of such prisoner.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 79, as amended by L. 1889, ch. 382, § 1; L. 1902, ch. 500, § 3.

Summary revocation of parole for conditions broken: see L. R. A. 1915F 541 note.

Jail as nuisance: see Ann. Cas. 1913E 858 note. *Liability of municipality for unsafe or unhealthy condition of jail:* see the following notes: 4 Ann Cas. 516; 12 Ann. Cas. 797; Ann. Cas. 1913B 1280; Ann. Cas. 1915D 153.

Cited.—This section was cited in Gargan v. Sculley, (1913) 82 Misc. 667, 144 N. Y. S. 205. It was cited in Op. Atty.-Gen. (1910) 887, in connection with the construction of section 217. See infra, § 217 note. It was also cited in Op. Atty.-Gen. 1909) 820, in connection with the construction of section 214. See supra, § 214 note.

§ 216. Officer may arrest prisoner. Any officer of said prison, any parole officer, or any officer authorized to serve criminal process within this state to whom such warrant shall be delivered is authorized and required to execute said warrant by taking said

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prisoner and returning him to said prison, within the time specified in said warrant therefor. Such officer other than an officer of the prison, or parole officer, shall be entitled to receive the same fees therefor as upon the execution of a warrant of arrest at the place where said prisoner shall be retaken, and as for transporting a convict from the place of arrest to the prison, in case such officer also transports said prisoner to the prison. Such fees of the officer other than a prison officer, or parole officer, and the expenses of a prison officer in executing such warrant shall be paid by the agent and warden of the prison out of the moneys standing to the credit of such paroled prisoner as hereinafter provided, if any or sufficient therefor, and otherwise out of the funds of the prison. The parole officers, for purposes of identification, may, within this state, measure, describe and photograph prisoners in accordance with the Bertillon system.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 80, as amended by L. 1889, ch. 382, § 1; L. 1902, ch. 500, § 4.

Cited.—This section was cited in Op. Atty.-Gen. (1909) 820, in connection with the construction of section 214. See supra, § 214 note. It was cited in Op. Atty.-Gen. (1910) 887, in connection with the construction of section 217. See infra, § 217 note.

§ 217. Appearance of recaptured paroled prisoner before board of parole; imprisonment after delinquency. At the next meeting of the board of parole of state prisons, held at such prison, after the issuing of a warrant for the retaking of any paroled prisoner, said board shall be notified thereof. If said prisoner shall have then been returned to said prison, he shall be given an opportunity to appear before said board, and the said board may after such opportunity has been given, or in case said prisoner has not yet been returned, declare said prisoner to be delinquent, and he shall whenever arrested by virtue of such warrant be thereafter imprisoned in said prison for a period equal to the unexpired maximum term of sentence of such prisoner, at the time such delinquency is declared, unless sooner released on parole or absolutely discharged by the board of parole of state prisons.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 81, as amended by L. 1889, ch. 382, § 1.

Right of returned paroled prisoner to commutation.—While a prisoner who has violated his parole must on his return to prison, serve out the unexpired maximum term of his sentence, he is not deprived of commutation as provided by section 230 of the Prison Law. Op. Atty.-Gen. (1910) 897. It was ruled, however, in Op. Atty.-Gen. (1913) 522, that where a convict on

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parole committed a felony, and was declared delinquent by the parole board, and thereafter was sentenced to a definite term of imprisonment, the commutation period was to be deducted from the period of imprisonment of the second term only, which term did not commence to run until the time when the original term expired without commutation.

Surrender of paroled prisoner under arrest for crime committed while on parole.— The board of parole cannot compel the surrender of a paroled prisoner, arrested for a crime committed by him while on parole, until he has been tried, and, if convicted, until he has served the sentence imposed upon him for the subsequent offense. Op. Atty.-Gen. (1910) 886.

§ 218. Absolute discharge of paroled prisoner. If it shall appear to said board of parole that there is reasonable probability that any prisoner so on parole will live and remain at liberty without violating the law, and that his absolute discharge from imprisonment is not incompatible with the welfare of society, then said board shall[1] issue to said prisoner an absolute discharge from imprisonment upon such sentence, which shall be effective therefor.[2]

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 82, as amended by L. 1889, ch. 382, § 1; L. 1902, ch. 500, § 5. It was amended to read as above by L. 1912, ch. 286, § 1. The amendments are shown in the footnotes.

Constitutionality.— The present section which authorizes the board of parole to issue to a prisoner on parole an absolute discharge from imprisonment, is constitutional. People v. Sing Sing Prison, (1902) 39 Misc. 113, 78 N. Y. S. 907.

Limitation upon right to discharge under former statute.— Under the former reading of the statute, the board of parole had no authority to grant an absolute discharge to a prisoner serving a definite sentence. See Op. Atty.-Gen. (1913) 75; Op. Atty.-Gen. (1912) 136, 484; Op. Atty.-Gen. (1910) 899.

Cited.—This section was cited in Gargan v. Sculley, (1913) 82 Misc. 667, 144 N. Y. S. 205.

§ 219. Not to affect governor's powers to pardon or commute. Nothing herein contained shall be construed to impair the power of the governor of the state to grant a pardon or commutation in any case.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 83, as amended by L. 1889, ch. 382, § 1.

Power of governor to grant commutations and pardons: see CONSTITUTION, art. IV, § 5; Code Crim. Pro., § 692.

[1] Words "if such prisoner was originally sentenced to an indeterminate term," omitted.

[2] Words "and if such prisoner was originally sentenced to a definite term the said board shall report his case to the governor, with such information and recommendations as they may deem proper, for his discretionary action," omitted.

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ARTICLE 9

COMMUTATIONS

Section 230. Definite sentence; indeterminate sentence; commutation; compensation.
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247. Application of article to a hospital for insane criminals or convicts.
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249. Meaning of certain terms; provisions of article not to apply to certain institutions.

§ 230. Definite sentence; indeterminate sentence; commutation; compensation. 1. A sentence to imprisonment in a state prison for a definite fixed period of time is a definite sentence. A sentence to imprisonment in a state prison having minimum and maximum limits fixed by the court is an indeterminate sentence.

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2. Every convict confined, at the time this section as hereby amended takes effect, under a definite sentence in any state prison or penitentiary in this state, on a conviction of a felony or misdemeanor, whether male or female, where the terms or term equal or equals six months exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may continue to earn for himself or herself, in the same manner as heretofore and notwithstanding the amendments to this section, the commutation or diminution of his or her sentence or sentences which he or she has been heretofore entitled to earn, namely: five days for each month of a period less than a year, two months for the first year, two months for the second year, four months each for the third and fourth years, and five months for each subsequent year. Any such convict may also earn in each period of thirty days of the unexpired term, counting from the day on which this section as hereby amended takes effect, in further reduction of his or her sentence, as compensation for efficient and willing performance of duties assigned to him or her, not to exceed two and one-half days in any such thirty-day period in which the duties assigned are performed in the manner above specified.

3. Every convict, whether male or female, hereafter received into a state prison or penitentiary in this state, under a definite sentence, on a conviction of a felony or misdemeanor, where the terms or term equal or equals six months exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may earn for himself or herself, by good conduct, a commutation or diminution of his or her sentence or sentences as follows: Not to exceed two and one-half days for each month of a period less than a year; not to exceed one month each for the first three years; not to exceed two months each for the fourth, fifth and sixth years; not to exceed three months each for the seventh, eighth and ninth years; not to exceed four months each for the tenth, eleventh and twelfth years; not to exceed five months each for the thirteenth, fourteenth and fifteenth years; not to exceed six months each for the sixteenth, seventeenth and eighteenth years; and not to exceed seven months each for any subsequent year. Any such convict, and any convict now confined in any such prison or penitentiary who is subject to the jurisdiction of the parole board

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and any convict hereafter received into any such prison or penitentiary under an indeterminate sentence, may also earn in each period of thirty days, counting from the day when his or her imprisonment began, or in the case of a convict now confined who is subject to the jurisdiction of the parole board, from the time this section as hereby amended takes effect, in further reduction of his or her definite sentence, or in reduction of the minimum term in the case of a present convict who is subject to the jurisdiction of the parole board or is hereafter confined under an indeterminate sentence, as compensation for efficient and willing performance of duties assigned to him or her, not to exceed ten days in any such thirty-day period in which the duties assigned are performed in the manner above specified.

4. An account shall be kept in suitable books by the agent and warden with each convict entitled to earn compensation under the provisions of this section, and at the end of each thirty-day period the agent and warden shall credit the convict with the time earned as such compensation within such period and shall enter the same in such account.

This section was derived from L. 1886, ch. 21, § 1, as amended by L. 1903, ch. 137, § 1. It was amended to read as above by L. 1912, ch. 79, § 1; L. 1916, ch. 358, § 4. The amendment by L. 1912, ch. 79, § 1, substituted "six months" in place of "one year" following the words "where the term or terms equal or equals" in what is now the first part of subdivision 2, and also added the words "five days for each month of a period less than a year" which now follow the colon in the first sentence of subdivision 2. The amendment by L. 1916, ch. 358, § 4, re-enacted the first two sentences of the former section as subdivision 1; amended and placed in subdivision 2 the remainder of the former section; added, as new matter, all the rest of the section beginning with the last sentence in subdivision 2.

Power of governor to grant commutations and pardons: **see CONSTITUTION, art. IV, § 5; Code Crim. Pro., § 692.**

Sentence to imprisonment for less than one year: **see PENAL LAW, § 2181.**

Sentence to imprisonment for one year: **see PENAL LAW, § 2182.**

Sentence to imprisonment for more than one year: **see PENAL LAW, § 2183.**

Sentence to imprisonment on two or more convictions: **see PENAL LAW, § 2190.**

Calculating term of imprisonment: **see PENAL LAW, § 2193.**

Life sentence as forfeiture of office and suspension of civil rights: **see PENAL LAW, § 510.**

Life imprisonment as civil death: **see PENAL LAW, § 511.**

Reprieves, commutations and pardons: **see Code Crim. Pro., § 692 et seq.**

Minimum and maximum of one year as a definite sentence.—A sentence fixing a minimum at one year and a maximum at one year, is a definite sentence. Op. Atty.-Gen. (1904) 309.

Mandamus to compel certain commutation.—Mandamus will not lie to compel the prison board to grant a certain commutation of sentence. Op. Atty.-Gen. (1909) 282.

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Further commutation after commutation by governor.— It has been ruled that where the governor has commuted the sentence of a prisoner and does not direct that the sentence as commuted by him should be subject to further commutation in accordance with the Prison Law, the prisoner is not entitled to any further commutation of his sentence by virtue of said law. Op. Atty.-Gen. (1911) 638.

Application of section to county jails.— The commutation provisions of the present section do not apply to sentences to county jails. Op. Atty.-Gen. (1912) 540.

Applicability of Commutation Act to Blackwell's Island.— The Commutation Act is not applicable to the workhouse on Blackwell's Island; and prisoners transferred to that institution from penitentiaries are entitled only to such commutation as they have earned prior to the transfer. Op. Atty.-Gen. (1904) 214.

Minimum term exceeding maximum after deducting commutation.— It was held in People v. Deyo, (1905) 181 N. Y. 425, 74 N. E. 430, reversing 103 App. Div. 126, 93 N. Y. S. 80, that where the maximum of the term of a convict sentenced for a felony, while the Commutation Law of 1886 (ch. 21) was in force, was four years and seven months and the minimum four years, the sentence was not illegal because the convict might earn commutation entitling him to his discharge before the expiration of the minimum term for which he was sentenced, since he might never earn the commutation.

Right to commutation upon commitment in default of bond to keep the peace.—A prisoner committed to a county penitentiary in default of giving security to keep the peace is not entitled to commutation on the terms of his commitment for such default. Op. Atty.-Gen. (1912) 540.

Retroactive effect of Law of 1903 limiting commutation to definite sentences. — It was held in People v. Johnson, (1904) 44 Misc. 550, 90 N. Y. S. 134, that the right to commutation for good behavior was a substantial right, and that the Law of 1903 (L. 1903, ch. 137), which limited the right to a case of a definite sentence, did not apply to a crime committed prior to its enactment. See also in support of the principle underlying this decision, Op. Atty.-Gen. (1909) 802; Op. Atty.-Gen. (1904) 345, 352.

Application amendments of 1912.— It was ruled in Op. Atty.-Gen. (1912) 417, that the amendment of 1912 (L. 1912, ch. 79) to the present section was applicable to all prisoners in confinement at the date of its enactment.

Application of section to indeterminate sentences.— Prior to the amendment of 1916 the provisions of the present section had no application to indeterminate sentences. See Op. Atty.-Gen. (1913) 443; Op. Atty.-Gen. (1908) 464; Op. Atty.-Gen. (1904) 236, 273, 309.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 36; Op. Atty.-Gen. (1912) 41; Op. Atty.-Gen. (1909) 819. It was cited in Op. Atty.-Gen. (1913) 51, in connection with the construction of section 211a. See supra, § 211a note. It was cited in Op. Atty.-Gen. (1914) 322, in connection with the construction of section 483 of the Code of Criminal Procedure, relating to judgment upon revocation of suspension. This section was also cited in Op. Atty.-Gen. (1910) 897, in connection with the construction of section 217. See supra, § 217 note. The statute embodying the present section was cited in People v. Sage, (1897) 13 App. Div. 135, 43 N. Y. S. 372, reversing 17 Misc. 712, 41 N. Y. S. 531, in connection with the construction of section 488 of the Code of Criminal Procedure, relating to the execution of judgment of fine and imprisonment.

§ 231. Commutation, how computed. Where any convict in any state prison or penitentiary in this state is held under more than one conviction, the several terms of imprisonment imposed

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thereunder shall be construed as one continuing term for the purpose of estimating the amount of commutation which he or she may be entitled to under the provisions of this article.

This section was derived from L. 1886, ch. 21, § 2.

Time allowance to prisoner whose sentence has been commuted from life to a term of years: see L. R. A. 1915B 95, note.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 36; Op. Atty.-Gen. (1909) 282, 819. It was cited in Op. Atty.-Gen. (1913) 315, in connection with the construction of section 211. See supra, § 211 note. It was cited in Op. Atty.-Gen. (1913) 522, in connection with the construction of section 217. See supra, § 217 note. This section was cited in Op. Atty.-Gen. (1914) 165, in connection with the construction of section 243. See infra, § 243 note. This section was also cited in Op. Atty.-Gen. (1912) 41, in connection with the construction of section 211a. See supra, § 211a note. The statute embodying the present section was cited in Op. Atty.-Gen. (1907) 539; Op. Atty.-Gen. (1895) 261; Op. Atty.-Gen. (1894) 82, 206; Op. Atty.-Gen. (1891) 157.

§ 232. Term of imprisonment, when to begin. For the purpose of this article the term of imprisonment of each convict shall begin on the date of his or her actual incarceration in a state prison or penitentiary.

This section was derived from L. 1886, ch. 21, § 3.

Commencement of term of prisoner returned for resentence.— It was ruled in Op. Atty.-Gen. (1913) 63, that a prisoner who has been returned from a state prison because of an improper sentence, and resentenced to a term of imprisonment as of the date of the original sentence, begins his term of imprisonment for the purpose of commutation on the date he was first received at the prison.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 322.

§ 233. Warden to report monthly to governor; contents. On any day not later than the twentieth day of each month, the agent and warden of each of the state prisons in this state, and the warden or superintendent of each of the penitentiaries in this state, shall forward to the governor a report, directed to him, of any convict whose term may be diminished and any convict who, in the case of a convict not subject to the jurisdiction of the board of parole, may be discharged the following month, by reason of the commutation of his or her sentence, or on account of compensation earned, in the manner provided in this article, which may be written or printed, or partly written and partly printed, which shall be uniform as to size and arrangement, which size and arrangement shall be fixed by the governor, and shall contain the following information, distinctly written, namely: The full name of the convict, together with any alias which he or she may be

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known to have, the name of the county where the conviction was had, a brief description of the crime of which the convict was convicted, the name of the court in which the conviction was had, the name of the presiding judge, the date of sentence, the date of reception in the prison or penitentiary and the term and fine. In all cases the report shall show the amount of commutation and compensation recommended, and the date of expiration of the term and, in the case of convicts not subject to the jurisdiction of the parole board, the date for discharge, if such commutation or compensation, or either, be allowed.

This section was derived from L. 1886, ch. 21, § 4. It was amended to read as above by L. 1916, ch. 358, § 5. The amendment added the words "whose term may be diminished and any convict who, in the case of a convict not subject to the jurisdiction of the board of parole" next following the word "convict" where it first occurs in the section; omitted the words "in the manner hereinafter provided" which formerly followed the words "his or her sentence," and added in place thereof the words "or on account of compensation earned, in the manner provided in this article." The amendment also inserted the last sentence in place of the words "the amount of commutation recommended, and the date for discharge from the prison or penitentiary, if allowed" with which the former section ended.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 36; Op. Atty.-Gen. (1912) 417.

§ 234. Terms expiring on holidays and Sundays. In the case of all convicts where the date of expiration of term or date of such expiration accompanied with discharge from a state prison or penitentiary, as determined after diminution of sentence under the provisions of this article, falls on Sunday, or any legal holiday, it shall fall on the day following.

This section was derived from L. 1886, ch. 21, § 5. It was amended to read as above by L. 1916, ch. 358, § 6. The section before amendment read as follows: "In the cases of all convicts where the date of discharge from a state prison or penitentiary, as determined after the allowance of commutation for good conduct, falls on Sunday, or any legal holiday, it shall fall on the day following."

Holidays and half-holidays: see GENERAL CONSTRUCTION LAW, § 24.

§ 235. Rules for allowance of commutation and compensation; change thereof. The superintendent of state prisons shall formulate rules governing the allowance or disallowance of commutation to convicts for good conduct and diminution of sentence on account of compensation earned for efficient and willing performance of duties assigned to them in prison or penitentiary. All such rules shall in all cases be strictly adhered to in all the prisons

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and penitentiaries in this state. These rules may be changed from time to time, if necessary, in the discretion of the superintendent of state prisons, and he shall immediately on their adoption or of any changes in the same thereafter, cause copies of the same to be forwarded to the agents and wardens of all the prisons, and the wardens or superintendents of all the penitentiaries in this state. A copy of these rules shall be furnished to every convict entitled to the benefits of this article.

This section was derived from L. 1886, ch. 21, § 6. It was amended to read as above by L. 1916, ch. 358, § 7. The amendment added the words "and diminution of sentence . . . assigned to them" in the first sentence; also inserted the words "All such rules" in place of the word "which" which followed next after the word "penitentiary" in the former section.

Limitation upon power of superintendent.—Although the present section empowers the superintendent of prisons to formulate rules governing the recommendations of the prison board regarding the allowance or disallowance of commutation to convicts for good conduct in prison, these rules must not be inconsistent with the provisions of the Prison Law relating to such matters, and, where they are inconsistent, the rules must fall. Op. Atty.-Gen. (1914) 40.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 417; Op. Atty.-Gen. (1910) 897.

§ 236. Allowance of commutation and compensation to be determined by prison board; regulations respecting the same; part of commutation or compensation may be withheld. For the purpose of applying the rules mentioned in the last section for the allowance or disallowance of commutation for the good conduct of any convict, and for the allowance of compensation under the provisions of this article for efficient and willing performance of duties assigned, a board shall be constituted in each of the prisons of this state, to consist of the agent and warden, the principal keeper, the physician therein and the superintendent of industries, and, in each of the penitentiaries of this state, the warden or superintendent, the deputy or principal keeper and the physician therein, or of the persons acting in their place and stead. This board shall meet once in each month before the date fixed for the transmission of their report to the governor, as hereinbefore provided, and proceed to determine the amount of commutation and compensation which they shall recommend to be allowed to any convict, which shall not in any case exceed the amount fixed by this article. They shall have full discretion to recommend the withholding of the allowance of commutation for good conduct, or compensation, or of a part thereof, as a punishment for offenses

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against the discipline of the prison or penitentiary, in accordance with the rules hereinbefore mentioned. Compensation credited to a convict in the first instance, in his account, by the agent and warden, as provided in section two hundred and thirty, shall stand as the compensation allowed, unless withheld wholly or partly by the board as punishment, as above provided.

This section was derived from L. 1886, ch. 21, § 7. It was amended to read as above by L. 1916, ch. 358, § 8. The amendment added the words "and for the allowance . . . of duties assigned," which follow the word "convict" near the beginning of the section. The amendment also changed the composition of the board; added the words "and compensation" next after the word "commutation" in the second sentence; added the words "or compensation" next following the words "good conduct" in the third sentence, and added the last sentence of the section.

Constitutionality of statute conferring commutation power on board: see 4 Ann. Cas. 1111 note; 20 Ann. Cas. 479 note.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 36; Op. Atty.-Gen. (1912) 417.

§ 237. Reasons for withholding to be sent to governor; his power. In all cases, however, where the board shall recommend the withholding of the allowance of the whole or any part of commutation for good conduct, they shall forward with their report to the governor their reasons, in writing, for such disallowance, and the governor may, in his discretion, decrease or increase the amount of commutation as recommended by the said board, but he shall not increase the same beyond the amount fixed by this article.

This section was derived from L. 1886, ch. 21, § 8.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 36; Op. Atty.-Gen. (1912) 417; Op. Atty.-Gen. (1909) 282.

§ 238. Forfeiture of commutation and compensation for escapes. In case any convict in any of the state prisons or penitentiaries in this state having a sentence or sentences which equals or equal four years, escapes or attempts to escape, he or she shall, for the first escape or attempt to escape, forfeit one-half of the amount of commutation and compensation provided for in this article. For the second escape or attempt to escape, he or she shall forfeit all such commutation and compensation. Any convict, however, having a sentence or sentences which equals or equal less than four years, who escapes or attempts to escape, shall forfeit all compensation and commutation provided for in this article. But

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where a convict has more than one term the provisions of this section shall only apply to the term during which the escape or attempt to escape was made.

This section was derived from L. 1886, ch. 21, § 9. It was amended to read as above by L. 1916, ch. 358, § 9. The amendment added the words "and compensation provided" near the end of the first sentence. In the second sentence the words "such commutation and compensation" were added, and the words "commutation for good conduct as provided for in this article," with which the former second sentence concluded, were omitted. The amendment also affected the third sentence by adding the words "compensation and" and the omitting of the words "for good conduct as".

Escape of prisoners generally: see PENAL LAW, § 1694 et seq.

Escape by prisoner serving two terms.— A prisoner confined in a state prison under two sentences, one for a term of not less than three years and six months and not more than four years and six months, the other for the term of four years and four months, who escapes while serving the first term, forfeits one-half of the statutory commutation of such first term. Op. Atty.-Gen. (1913) 594.

Cited.— This section was cited in Op. Atty.-Gen. (1914) 36; Op. Atty.-Gen. (1914) 40; Op. Atty.-Gen. (1911) 689; Op. Atty.-Gen. (1899) 152; Op. Atty.-Gen. (1895) 146; Op. Atty.-Gen. (1889) 341; Op. Atty.-Gen. (1889) 366.

§ 239. Proceedings for determining as to escapes. The board hereinbefore provided for to fix the amount of commutation for good conduct shall, immediately on the escape or attempt to escape of any convict, meet and proceed to investigate the said escape or attempt to escape, reduce the testimony of all persons having knowledge on the subject to writing, cause the said persons to affix their signatures thereto and make oath to the same before any one of the members of said board, who is hereby authorized and empowered to administer such oath, and false swearing on such examination or in such statement shall be perjury. The said board shall thereupon make a full report in writing, and immediately forward the same to the superintendent of state prisons, who shall thereupon determine whether an escape or attempt to escape was committed, make an indorsement, in writing, of his decision, and return the same to the agent and warden of the state prison, or the warden or superintendent of the penitentiary where the escape or attempt to escape shall have occurred, where the same shall be recorded in a book to be kept for that purpose. But if from newly-discovered evidence, or other just cause, there is reasonable ground to believe that an injustice has been done to any convict in his or her having been adjudged to have escaped or attempted to escape, the superintendent of state prisons may, in

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his discretion, make an order in writing directed to the agent and warden of the state prison or the warden or superintendent of the penitentiary from which such convict was adjudged to have escaped or attempted to escape, requiring that a re-examination of the former adjudication be had, and upon a report to him of such re-examination, he shall proceed to render a decision upon the same. And the proceedings on such re-examination, the decision and the proceedings had thereunder, shall in all respects be conducted in the manner above set forth in this section as upon a first hearing in the matter of an escape or attempt to escape. But the provisions of this section shall not apply to the case of any convict, the length of whose term or terms is less than one year.

This section was derived from L. 1886, ch. 21, § 10.
Cited.—This section was cited in Op. Atty.-Gen. (1911) 689.

§ 240. To whom provisions as to escapes are applicable. The provisions of section two hundred and thirty-eight shall apply to all convicts who are now, or who may hereafter be confined in any prison or penitentiary of this state.

This section was derived from L. 1886, ch. 21, § 11.

§ 241. Reports to governor, how signed. The reports of the various boards for the determination of the amount of compensation or commutation in the prisons and penitentiaries of this state to the governor, shall be personally signed by the members thereof.

This section was derived from L. 1886, ch. 21, § 12. It was amended to read as above by L. 1916, ch. 358, § 10. The amendment inserted the words "the amount of compensation or commutation" in lieu of the words "commutation for good conduct of convicts" in the former section.

§ 242. Power of governor to grant compensation or commutation. The governor, upon the receipt of the report recommending the allowance of diminution of sentences of convicts as provided for in this article, may, in his discretion, allow the same, in whole or in part, as to any or all of such convicts. He shall place the names of all convicts whose sentences he may determine to reduce who are subject to the jurisdiction of the parole board upon a list, prepared in duplicate, each of which shall have his written order annexed thereto directing such reduction and specifying the date of expiration of the minimum term as reduced. He shall place the names of all other convicts so reported whose sentences

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he may determine to reduce upon his warrant for their discharge, specifying the date of discharge in each case. Such warrant shall be directed to the agent and warden of the state prison, or the warden or superintendent of the penitentiary, wherein such convicts may be confined. One copy of any such list of convicts subject to the jurisdiction of the parole board, with the accompanying order, shall be transmitted by the governor to the parole board and one copy to the agent and warden of the prison in which the convicts named in the list are confined. The agent and warden shall give immediate written notice thereof to each convict whose minimum term is thereby reduced. Any such warrant for the discharge of other convicts shall be transmitted to the officer to whom it is directed, who shall thereupon proceed to execute such warrant by discharging the convicts mentioned therein on the date fixed for their discharge.

This section was derived from L. 1886, ch. 21, § 13. It was amended to read as above by L. 1916, ch. 358, § 11. Before the amendment the section related to "Power of governor to grant commutation for good conduct."

Constitutional power of governor to grant commutations: see CONSTITUTION, art. IV, § 5.

§ 243. Governor to annex condition to discharge; return of convict to prison for violation. The governor shall, in reducing the sentences of convicts not subject to the jurisdiction of the board of parole, annex a condition to the effect that if any such convict shall, during the period between the date of his discharge by reason thereof and the date of the expiration of the full term for which he was sentenced, be convicted of any felony, committed in the interval as aforesaid, he shall, in addition to the sentence which may be imposed for such felony and before beginning the service of such sentence be compelled to serve in the prison or penitentiary in which he may be confined for the felony for which he is so convicted, the remainder of the term without commutation which he would have been compelled to serve but for the commutation of his sentence as provided for in this article; but he may, however, earn compensation in reduction of the remainder of such term.

This section was derived from L. 1886, ch. 21, § 14. It was amended to read as above by L. 1910, ch. 403, § 1, and L. 1916, ch. 358, § 12. Before the amendment by L. 1916, ch. 358, § 12, the section related to "Governor to annex condition to commutation; return of convict to prison for violation."

Procedure on violation of conditional pardon: see Code Crim. Pro., § 696 *et seq.*

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Constitutionality.— The present section does not violate the constitutional provision (art. 1, § 6) that "no person shall be subject to be twice put in jeopardy for the same offense." People v. Sage, (1896) 11 App. Div. 4, 42 N. Y. S. 251; Ex parte Russell, (1904) 92 N. Y. S. 68. See also People v. Hayes, (1909) 64 Misc. 104, 118 N. Y. S. 42; In re Whalen, (1892) 65 Hun 619 mem., 19 N. Y. S. 915.

Application of section to federal circuit.— One serving in a state prison under sentence imposed by a federal court is subject to the provisions of the present section. Matter of Walters, (1904) 128 Fed. 791; Matter of Willis, (1897) 83 Fed. 148.

Forfeiture by second-term prisoner.— It was ruled in Op. Atty.-Gen. (1914) 165, that where the several terms of imprisonment of a convict are computed as one continuing term, and shortened for good conduct, and a condition of the commutation violated during the term, the convict should serve the unexpired or commuted portion of his term of imprisonment considered as one continuing term.

Conviction during period of commutation of felony committed prior to first imprisonment.—A person convicted of a felony and imprisoned for a term in a state prison, who has earned a commutation of six months and has been discharged, but who has been convicted of another felony within the period of six months' commutation and returned to prison for a crime committed before his first imprisonment, is not obliged to serve the full term for which he was originally convicted; in other words, to serve out the six months' commutation. Op. Atty.-Gen. (1909) 804.

Time of detention in asylum as affecting time of returned convict.— It has been ruled that where a discharged convict has been returned to prison upon conviction for a crime committed within the period for which his sentence was commuted, the time of his detention in an asylum for insane criminals after his discharge cannot be deducted from the commutation earned under the first sentence; he must serve the full amount of such commutation time. Op. Atty.-Gen. (1889) 382.

Violation of condition of commutation by female felon.— It was ruled in Op. Atty.-Gen. (1909) 813, that where a female prisoner, released from the Matteawan State Hospital, was allowed a commutation of three years and six months, and before such time had expired was convicted of attempt to commit the crime of grand larceny and sent to the New York county penitentiary, she should not, for the purpose of serving the commuted time, be returned to the Auburn prison for female felons, where she was originally incarcerated before she was taken to Matteawan, but should be retained at the New York county penitentiary and compelled to serve the forfeited commutation period at that institution.

Cited.—This section was cited in Op. Atty.-Gen. (1909) 804; Op. Atty.-Gen. (1910) 914; Op. Atty.-Gen. (1897) 86; Op. Atty.-Gen. (1897) 174; Op. Atty.-Gen. (1894) 151; Op. Atty.-Gen. (1890) 61; Op. Atty.-Gen. (1890) 90.

§ 244. Certificate of warden as to commutation or compensation may be received in evidence. The certificate of the agent and warden of a state prison or the warden or superintendent of a penitentiary, that the period of imprisonment of a convict was commuted, or diminished by compensation, under the provisions of this article, and of the crime and the length of term for which such commutation or diminution was granted, shall be received in

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evidence as proof for the purposes mentioned and described in section two hundred and forty-three.

This section was derived from L. 1886, ch. 21, § 15. It was amended to read as above by L. 1916, ch. 358, § 13. The amendment added the words "or diminished by compensation" following the second comma, and added the words "or diminution" in the last part of the sentence. The amendment also changed the section head, which formerly read "Certificate of warden as to commutation may be received in evidence."

Cited.—This section was cited in Op. Atty.-Gen. (1909) 804; Op. Atty.-Gen. (1909) 813.

§ 245. Convicts to be informed of this article. Upon the receipt of any convict in any prison or penitentiary in this state who shall be entitled to the benefits of this article, the provisions of the same, and if he be subject to the jurisdiction of the parole board, the provisions of article eight of this chapter, shall be read to him or her and the meaning of the same shall be fully explained to him or her by the clerk of the prison or penitentiary.

This section was derived from L. 1886, ch. 21, § 16. It was amended to read as above by L. 1916, ch. 358, § 14. The amendment added the words "and if he be subject to the provisions of the parole board, the provisions of article eight of this chapter."

§ 246. Proceedings upon discharge. Upon the discharge of any convict by reason of commutation or reduction of sentence, the provisions of sections two hundred and forty-three and two hundred and forty-four of this article shall be read and their nature fully explained, to him or her, by the clerk of the prison or penitentiary.

This section was derived from L. 1886, ch. 21, § 17. It was amended to read as above by L. 1916, ch. 358, § 15. The amendment added the words "or reduction of" at the beginning of the section, and omitted the words "for good conduct," which formerly followed next after the word "sentence."

Cited.— This section was cited in Op. Atty.-Gen. (1909) 804.

§ 247. Application of article to a hospital for insane criminals or convicts. The provisions of this article shall apply to any prisoner who may have been transferred to a state hospital for insane criminals or convicts from any of the prisons or penitentiaries or from any reformatory of this state to which he or she may have been transferred from any of the prisons or penitentiaries of this state whose sentence or sentences aggregates or aggregate not less than one year. And the medical superintendent of

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such hospital may and shall perform any of the acts which may or shall be done by any board mentioned in this article.

This section was derived from L. 1886, ch. 21, § 18.

Detention of returned convict in asylum after discharge as affecting service during commutation period: see supra, § 243, note.

§ 248. Application of article to convicts in reformatories. The provisions of this article shall apply to any convict who may have been transferred from any of the prisons or penitentiaries to any reformatory of this state, whose sentence or sentences equals or equal not less than one year. And the superintendent or chief officer of such reformatory may and shall perform any of the acts which may or shall be done by any board mentioned in this article.

This section was derived from L. 1886, ch. 21, § 19.

Right to commutation of prisoner transferred from reformatory.— It was ruled in Op. Atty.-Gen. (1904) 236, that convicts transferred from a reformatory to a state prison subsequent to the passage of chapter 137, Laws 1903, were not entitled to commutation.

There appears to be a conflict of opinion as to the right of a prisoner thus transferred to commutation under the Act of 1886 (L. 1886, ch. 21). See Op. Atty.-Gen. (1904) 352; Op. Atty.-Gen. (1895) 316.

As to transfer of prisoners from reformatories to state prisons, see infra, § 296.

§ 249. Meaning of certain terms; provisions of article not to apply to certain institutions. The term "compensation," as used in this article, means time allowed in reduction of sentence on account of efficient and willing performance of duties assigned; and such compensation shall not be withheld, in any thirty-day period, from a convict to whom no duties are assigned in such period. The provisions of this article shall not apply to prisoners in any institution to which chapter five hundred and seventy-nine of the laws of nineteen hundred and fifteen applies, who are committed thereto as provided in that act.

New. Added by L. 1916, ch. 358, § 16.

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ARTICLE 10

Executive Clemency

Section 260. Judge or district attorney to furnish facts.
261. Subpœna on application for executive clemency.
262. Appointment of person to hear application.
263. Oath to witnesses.
264. Form and service of subpœna; witness fees.
265. Penalty for failure of witness to appear.
266. Disbursements.

§ 260. Judge or district attorney to furnish facts. When application is made to the governor for a pardon, commutation or reprieve, it shall be the duty of the presiding judge of the court before which the conviction was had, and the district attorney by whom the criminal action was prosecuted, or the district attorney of the county where the conviction was had, holding office at the time of such application, to supply the governor, upon his request therefor, and without delay, with a statement of the facts proved on the trial; or, if a trial was not had, the facts appearing before the grand jury which found the indictment, and of any other facts having reference to the propriety of granting or refusing such pardon, commutation or reprieve.

This section was derived from Code Crim. Pro. § 695, as amended by L. 1884, ch. 356, § 1.

Pardoning power: see Constitution, art. IV, § 5. *Records of applications for executive clemency:* see Executive Law, § 6.

Constitutionality of restrictions on governor's pardoning power: see L. R. A. 1915F 519, note. *Power of governor to pardon as confined to offenses against the state:* see 19 Ann. Cas. 115, note; Ann. Cas. 1914A 484, note. *Power to pardon person convicted of bastardy:* see 16 Ann. Cas. 322, note. *Power of court to inquire into motives of governor in exercising pardoning power:* see 52 L. R. A. (N. S.) 113, note. *Pardon by lieutenant-governor or by governor pro tem:* see 47 L. R. A. (N. S.) 1036, note. *Legislative power to grant pardon:* see 34 L. R. A. 251, note. *Power of municipality to remit punishment for violation of ordinance:* see 38 L. R. A. (N. S.) 196, note.

Conditional pardon: see the following notes: 7 Ann. Cas. 92; 13 Ann. Cas. 1103; 10 Ann. Cas. 203; 14 L. R. A. 286; 16 L. R. A. (N. S.) 10. *Power to impose conditions extending beyond term of sentence:* see the following notes; 5 L. R. A. (N. S.) 1064) 20 L. R. A. (N. S.) 337; 26 L. R. A. (N. S.) 110. *Right to recall pardon:* see 22 L. R. A. (N. S.) 238, note *Summary revocation of conditional pardon:* see L. R. A. 1915F 541.

Necessity and sufficiency of recital of offense in pardon: see 3 Ann. Cas. 646, note.

Effect of pardon: as restoring forfeited office, see 19 Ann. Cas. 293 note; as affecting right to disbar attorney for criminal misconduct, see Ann. Cas. 1917A 1226 note, 16 L. R. A. (N. S.) 272 note; as affecting conjugal rights,

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see 7 L. R. A. (N. S.) 272 note; as affecting marriage relation, see 31 L. R. A. (N. S.) 519 note; as affecting right to divorce on account of conviction of crime, see 7 Ann. Cas. 1165 note; as affecting competency of witness, see 47 L. R. A. (N. S.) 206 note; as affecting fines, forfeitures, and costs, see 15 L. R. A. 395 note, 43 L. R. A. (N. S.) 207 note.

§ 261. Subpœna on application for executive clemency. The governor shall have the power in any matter pertaining to an application for clemency, to issue a subpœna to compel the attendance of a person before him at a time and place designated in said subpœna; and he shall also have the power to compel the production of any book, paper or writing by a subpœna duces tecum, directed to a person in whose custody either may be, at a time and place designated in said subpœna. But the provisions of this article shall not apply to any book, paper or writing filed in any office of record in any civil division of this state.

This section was derived from L. 1887, ch. 213, § 1.

§ 262. Appointment of person to hear application. The governor may appoint a person to conduct a hearing in a matter pertaining to an application for clemency, and his compensation shall not exceed ten dollars for each day's actual service. Such person, upon the conclusion of such hearing, shall forward to the governor without delay, the testimony taken before him. The governor may direct that a person subpœnaed by him, in conformity to the provisions of the preceding section, appear before a person designated by him to conduct a hearing as provided by this section; and a person so subpœnaed shall produce any book, paper or writing before said person so designated by the governor, in conformity with the provisions of the preceding section of this article.

This section was derived from L. 1887, ch. 213, § 2.

§ 263. Oath to witnesses. The governor or a person designated by him to conduct a hearing in a matter pertaining to an application for clemency, shall have power to administer an oath to a person brought before him.

This section was derived from L. 1887, ch. 213, § 3.

§ 264. Form and service of subpœna; witness fees. A subpœna, or subpœna duces tecum, issued in conformity with the provisions of this article, shall be signed by the governor's private

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secretary, and be attested by the privy seal of the state, and may be served by any person authorized by law to serve subpœnas in civil or criminal actions at law. No person shall be compelled to appear as provided by this article, unless he is paid at the time of the service of the subpœna upon him, the fees and mileage prescribed by law for the attendance of witnesses in civil actions at law in the supreme court.

This section was derived from L. 1887, ch. 213, § 4.

Expert witness fees.— Where upon an application for executive clemency under the present statute the district attorney appears before the commissioner appointed by the governor to take testimony, and the case involves the consideration of questions of medical science and the examination of expert witnesses in connection therewith, an expert medical witness called by the district attorney who gives testimony on the hearing is entitled to proper fees therefor, and his claim for fees is a proper charge against the county where the hearing is had. Tompkins v. New York, (1897) 14 App. Div. 536, 43 N. Y. S. 878.

§ 265. Penalty for failure of witness to appear. A person subpœnaed who fails to appear, refuses to answer, or produce a book, paper or writing as provided in this article, shall upon conviction be adjudged guilty of a criminal contempt. And in addition thereto a person so subpœnaed shall be subject to all the provisions of law which now or may hereafter exist, relating to witnesses in civil or criminal actions at law; and the governor shall possess all the powers in relation to said provisions which are possessed by any court or judge, but he shall be limited to the matters arising under the provisions of this article.

This section was derived from L. 1887, ch. 213, § 5.

Criminal contempts: see JUDICIARY LAW, §§ 750, 751, 752; PENAL LAW, § 600 et seq.

§ 266. Disbursements. Any disbursements necessary to be made for any of the purposes mentioned in this article shall be paid upon the approval of the governor's private secretary, by the comptroller, out of any moneys in the treasury not otherwise appropriated.

This section was derived from L. 1887, ch. 213, § 6.

Expenses on applications for executive clemency: see EXECUTIVE LAW, § 5.

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ARTICLE 11

REFORMATORIES

Section 280. Name and location of state reformatories.
281. Board of managers of state reformatories.
282. Control and management of Eastern New York reformatory at Napanoch vested in state board of managers.
283. Management and control of state reformatories vested in state board of managers.
284. General powers and duties of state board of managers.
285. Transfer of prisoners from either reformatory to the other.
286. Superintendent of reformatories and assistant superintendent; appointment, powers and duties.
287. General duties of superintendent of reformatories.
288. Officers and employees at Napanoch reformatory to continue in their positions.
289. Compensation of officers and employees in state reformatories.
290. Board of managers may transfer officers and employees from one reformatory to the other.
291. Oaths and bonds of officers and employees.
292. General duties of chaplains.
293. General duties of physicians.
294. Powers and duties of treasurers.
295. Transportation of convicts to reformatories.
296. Transfer of prisoners to state prisons.
297. Transfer of convicts from state prisons to reformatories.
298. Control and discipline of prisoners at reformatories.
299. Register of prisoners at reformatories.
300. Parole of prisoners at reformatories.
301. Retaking of paroled prisoners of reformatories.
302. Rules of reformatories.
303. Marks for good conduct at reformatories; records filed with secretary of state.

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Section 304. Absolute release from imprisonment from reformatories; discharge.
305. Sentences for a definite period to reformatories.
306. Supervision of prisoners paroled from reformatories.
307. Sentence to reformatories.
308. State to pay expenses of trial of convict committing crime in reformatory.

§ 280. Name and location of state reformatories. The state reformatory at Elmira is continued, and shall be known as the New York state reformatory; and the state reformatory at Napanoch is continued, and shall be known as the Eastern New York reformatory.

This section was derived from L. 1906, ch. 684, § 1 pt. The remainder of L. 1906, ch. 684, § 1, is covered by section 281.

Sentence of males between sixteen and thirty years of age to New York state reformatory: see PENAL LAW, § 2185. *Sentence of minors to imprisonment:* see PENAL LAW, § 2186. *Sentence to house of refuge, state industrial school, and New York state training school for girls:* see PENAL LAW, § 2184. *Reformatory as nuisance:* see Ann. Cas. 1913E 858, note.

§ 281. Board of managers of state reformatories. There shall be a state board of managers of reformatories, consisting of seven members, who shall be appointed by the governor, by and with the advice and consent of the senate. The full term of office of each manager hereafter appointed shall be seven years. The managers of the reformatory at Elmira, in office on May thirty-first, nineteen hundred and six, shall be continued in office as members of said state board until the expiration of their terms, unless sooner removed for cause as provided by law. The said managers and two additional members appointed by the governor, as above provided, shall constitute said state board. The said state board of managers of reformatories shall elect from their number a president, a secretary and a treasurer. Said board may elect a secretary and treasurer for each institution. Such managers shall receive no compensation for their services, but shall receive their reasonable traveling and other official expenses.

This section was derived from L. 1906, ch. 684, § 1 pt. The remainder of L. 1906, ch. 684, § 1, is covered by section 280. This section was amended to read as above by L. 1909, ch. 240, § 64. The amendment corrected an error by changing the word "thirteenth" to "thirty-first" in the third sentence following the word May.

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Cited.— This section was cited in Op. Atty.-Gen. (1912) 299, in connection with the construction of section 306. See infra, § 306, note.

§ 282. Control and management of Eastern New York reformatory at Napanoch vested in state board of managers. The superintendence, control and management of the Eastern New York reformatory at Napanoch shall continue to be vested in said state board of managers. All unexpended appropriations or balances of appropriations for the erection, construction or equipment of the said reformatory, or for any other purpose in connection therewith, shall be expended under the direction of the said state board of managers.

This section was derived from L. 1906, ch. 684, § 2.
Cited.— This section was cited in Op. Atty.-Gen. (1913) 169, in connection with the question of salaries of employees. See infra, § 289, note.

§ 283. Management and control of state reformatory vested in state board of managers. Said state board of managers shall continue to be vested with the management and control of the state reformatory at Elmira and the transfer and parole of prisoners formerly possessed by the board of managers, and all existing laws relating to the management and control of the said New York state reformatory at Elmira and the transfer and parole of prisoners therein, are applicable to the management and control of the Eastern New York reformatory at Napanoch and the transfer and parole of prisoners therein. Said state board of managers shall be vested with the same authority, management and control of both of said reformatories, their officers and inmates, except as herein otherwise provided, that the former board of managers possessed over the said reformatory at Elmira, its officers and inmates.

This section was derived from L. 1906, ch. 684, § 3. It was amended by L. 1909, ch. 240, § 65. The amendment changed the word "present" to "former" preceding the words "board of managers" and changed the words "now possess" to "possessed" following the words "board of managers" near the end of the last sentence.

§ 284. General powers and duties of state board of managers. The state board of managers of reformatories shall:

1. Have the general superintendence, management and control of said reformatories, of the grounds and buildings, officers and

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employees thereof, of the prisoners therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof.

2. Make rules, not inconsistent with law, for the proper government of said reformatories and of the officers and employees thereof, and for the employment, discipline, education, transfer, parole and discharge of prisoners sentenced thereto.

3. Investigate the affairs of said reformatories, inquire into any improper conduct alleged to have been committed by any officer or employee, and require reports from the superintendent of reformatories and other officers thereof in relation to the discipline, labor and government of said reformatories and have power to take proof under oath in any such investigation or inquiry.

4. Meet at least once in each month for the purpose of performing the several duties prescribed in this article.

5. Examine, monthly or quarterly, all the accounts, expenditures and vouchers relating to the business of said reformatories, and certify their approval or disapproval thereof to the comptroller.

6. Report to the legislature, annually, on or before the tenth day of January, for the year ending with the last day of the next preceding June, the condition of said reformatories, the amount of money received and expended by them during such year with a detailed statement thereof; their proceedings in regard to the prisoners therein, and such other matters as they may deem proper, or as the legislature may require.

7. Make such other reports from time to time as the legislature may require.

This section was derived from L. 1900, ch. 378, § 3. Subdivision 6 was amended to read as above by L. 1916, ch. 118, § 25. The amendment substituted the word "June" for the word "September."

§ 285. Transfer of prisoners from either reformatory to the other. The said state board of managers may transfer prisoners committed to their custody from either one of said institutions to the other, in their discretion, and may provide rules and regulations governing such transfers.

This section was derived from L. 1906, ch. 684, § 4.

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§ 286. Superintendent of reformatories and assistant superintendent; appointment, powers and duties. Said state board of managers shall appoint a superintendent of reformatories, and may remove him for cause after an opportunity to be heard. Said superintendent shall have general oversight of both institutions, and, subject to the approval of said board of managers, shall appoint all other officers and employees of said institutions, and be possessed with all the powers and perform all the duties in both institutions prescribed in this article. There shall be an assistant superintendent for each one of said institutions, who shall be authorized to exercise in the institution to which he was appointed the powers and duties of the superintendent in case of his absence or inability to perform such duties, and to exercise such powers and perform such other duties as may be prescribed by said board of managers or by the superintendent.

This section was derived from L. 1906, ch. 684, § 5.

§ 287. General duties of superintendent of reformatories. The superintendent of reformatories, subject to the direction and control of the state board of managers, shall:

1. Have the general supervision and control of said reformatories, of the grounds and buildings, subordinate officers and employees thereof, the prisoners therein, and of all matters relating to the government and discipline thereof.

2. Make such rules and orders, not inconsistent with law, or with the rules and directions of the said board of managers, as he may deem proper or necessary for the government of said reformatories and of the officers and employees thereof; and for the employment, discipline and education of the prisoners sentenced thereto.

3. Annally report to the said board of managers, on or before the first day of December, all such matters as are required by the said board of managers.

4. Exercise such other powers and perform such other duties as the said board of managers may lawfully prescribe.

This section was derived from L. 1900, ch. 378, § 7.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 169, in connection with the question of salaries of employees. See infra, § 289, note.

§ 288. Officers and employees at Napanoch reformatory to continue in their positions. The officers and employees of the

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reformatory at Napanoch at the time said institution was transferred to the control of said state board of managers, shall be continued in their respective positions, or in similar positions, so far as practicable, subject to the power of removal possessed by said board of managers and said superintendent.

This section was derived from L. 1906, ch. 684, § 6.

§ 289. Compensation of officers and employees in state reformatories. Except as provided in this section the annual compensation of the several officers, keepers and employees, of both said institutions, shall be fixed by the state board of managers, not exceeding the maximum sums fixed under section seventeen of the state finance law. The guards, store-keepers, trade instructors and book-keepers employed in both such institutions shall receive the same compensation allowed by law to guards in the state prisons. The compensation of clerks in both such institutions shall be as follows: For the first year's service, six hundred dollars; for the second year's service, seven hundred and twenty dollars; for the third year's service, eight hundred and forty dollars; for the fourth year's service, and thereafter, nine hundred and sixty dollars. Maintenance and supplies may be allowed to such officers, guards, keepers and employees in the discretion of the board of managers as a part of said compensation.

This section was derived from L. 1906, ch. 684, § 7. It was amended to read as above by L. 1912, ch. 50. By this amendment the exception of guards, which was contained in the first sentence of the former section, was omitted. The words "store-keepers, trade instructors and book-keepers" in the second sentence were added by the amendment, as was the third sentence.

Maintenance and supplies to employees.— It is discretionary with the board of managers of reformatories to allow to officers and employees thereof, maintenance and supplies, but the allowance should be made as a part of the compensation, and not in addition thereto. In other words, the salaries, and maintenance and supplies, should not in the aggregate exceed the amounts allowed as compensation as provided in the present section. Op. Atty.-Gen. (1912) 278.

Compensation of employee who resigns and is reappointed.—An employee in a reformatory who resigns and is later reappointed is not entitled, on account of his previous service, to the increase of salary provided by this statute. Op. Atty.-Gen. (1913) 342.

Payment of salaries of employees during incapacity.— The general superintendent of reformatories has the power to continue salaries during the incapacity of employees in his discretion subject to review by the board of managers and by the salary classification commission. Op. Atty.-Gen. (1913) 169.

Cited.— This section was cited in Op. Atty.-Gen. (1912) 299, in connection with the construction of section 306. See infra, § 306, note.

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§ 290. Board of managers may transfer officers and employees from one reformatory to the other. Said state board of managers may also transfer officers and employees from either one of said institutions to the other for temporary or permanent service.

This section was derived from L. 1906, ch. 684, § 8.

§ 291. Oaths and bonds of officers and employees. All persons appointed to office as prescribed in this article, shall take the constitutional oath of office and file the same in the office of the secretary of state within fifteen days after such appointment. The superintendent and such other officers and employees, as may be so required by the comptroller, shall give bonds to the state in such sums and with such sureties as he shall approve, conditioned for the faithful performance of their lawful duties.

This section was derived from L. 1900, ch. 378, § 6.
Form of oath: see CONSTITUTION, art. XIII, § 1.
Cited.— This section was cited in Op. Atty.-Gen. (1912) 299, in connection with the construction of section 306. See infra, § 306, note.

§ 292. General duties of chaplains. The chaplain of each of said reformatories shall, under the rules of the state board of managers:

1. Hold religious services in the reformatory, and attend to the spiritual wants of the prisoners.

2. Personally communicate with the prisoners for the purpose of giving them religious and moral instruction.

3. Visit daily the sick in the hospital.

4. Perform such other duties, consistent with his calling and profession, as the said board of managers may direct.

This section was derived from L. 1900, ch. 378, § 8.

§ 293. General duties of physicians. The physician of each of said reformatories shall:

1. Have charge of the hospital of the reformatory, under the direction of the state board of managers, and keep a daily record of all admissions thereto, in such form as the said board of managers may prescribe.

2. Attend to the medical needs and prescribe the diet of the sick prisoners in the hospital or cells.

3. Examine daily, and as often as required by the superintendent, all prisoners undergoing punishment by solitary confine-

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ment or otherwise, and prescribe the allowance of food to each prisoner so confined.

4. Make such reports to the said board of managers, as to the sanitary condition of the reformatory and the general health of the prisoners, as he may see fit, and such other reports as may be required by the said board of managers, the superintendent of reformatories or the state commission of prisons.

5. Hold himself in readiness at all times to discharge his duties as such physician, as prescribed by statute and the rules of the said board of managers, whenever directed by the superintendent.

6. Perform such other duties as may be prescribed by the rules of the said board of managers.

This section was derived from L. 1900, ch. 378, § 9.

§ 294. Powers and duties of treasurers. The treasurer of each of said reformatories shall:

1. Have the custody of all moneys received from the comptroller on account of estimates made by the superintendent of reformatories and revised and approved by the comptroller and keep an accurate account thereof.

2. Collect and receive all moneys due the reformatory from any source.

3. Deposit all such money in a bank designated by the comptroller, conveniently near the reformatory, in his name as treasurer, and send each month to the comptroller a statement showing the amount so received and deposited, and from whom and for what received, and when such deposits were made. Such statement of deposits shall be certified by the proper officer or the bank receiving such deposit. The treasurer shall attach to such statement an affidavit to the effect that the sum so deposited is all the money received by him from any source, since making the last statement. A bank designated by the comptroller to receive such deposits shall, before any deposit is made, execute a bond to the people of the state, in a sum and with sureties approved by the comptroller, conditioned for the safe-keeping of the funds deposited.

4. Pay out money deposited for the uses of the reformatory, upon the vouchers of the superintendent of reformatories, in accordance with the estimates made by the said superintendent and revised and approved by the comptroller.

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5. Cause to be kept full and accurate accounts of all receipts and expenditures in the manner and form prescribed by the comptroller.

This section was derived from L. 1900, ch. 378, § 10.

§ 295. Transportation of convicts to reformatories. Upon the receipt, by the superintendent of reformatories, of notice of the sentence of a convict to either of said reformatories, an officer of such reformatory shall proceed to the place of conviction, and the sheriff or keeper of the prison having custody of the convict shall deliver the convict to such officer, with the papers required to be delivered with such convict, and such officer shall thereupon convey such convict to the reformatory at the expense of the reformatory. Such officer shall for the purpose of such conveyance have all the powers possessed by sheriffs in conveying a convict to a state prison in pursuance of law.

This section was derived from L. 1900, ch. 378, § 15.

§ 296. Transfer of prisoners to state prisons. If it shall appear to the state board of managers that said reformatories are overcrowded or that any prisoner confined in either of said reformatories,

1. Was, at the time of his conviction, more than thirty years of age; or

2. Has been previously convicted of a felony; or

3. While in the reformatory, is incorrigible and that his presence therein is seriously detrimental to the welfare of the institution; an application may be made to a justice of the supreme court of the judicial district in which such reformatory is located, for an order transferring the prisoner named therein to a state prison. Such application shall be by written petition signed by the president or secretary of the board and shall state the causes for seeking such transfer and due notice of such application with a copy of the petition shall be served personally or by mail at least eight days before the hearing on the superintendent of state prisons, who shall specify the institution to which such prisoner shall be transferred, in case the order shall be made. Such justice shall grant such order of transfer, on such hearing as he may prescribe, if it appears to his satisfaction that the facts alleged are true and

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that such transfer should be made. A prisoner so transferred shall be confined in such institution as under an indeterminate sentence, commencing with his imprisonment in the reformatory with a minimum of one year and a maximum fixed by law for the crime of which the prisoner was convicted and sentenced; and may be released on parole or absolutely discharged as are other prisoners confined under an indeterminate sentence. Such prisoner may be returned at any time to the reformatory in the discretion of the superintendent of state prisons, and with the consent of the said board of managers.

This section was derived from L. 1900, ch. 378, § 16, as amended by L. 1903, ch. 138, § 1.

Commutation of sentences of prisoners transferred from reformatories to state prisons: **see supra, § 248, note.**

Loss of citizenship.— One who is sentenced to a reformatory for a felony and is later transferred to a state prison does not lose his citizenship. Op. Atty.-Gen. (1912) 559.

Right to parole on transfer under Act of 1887.— It was ruled, in Op. Atty.-Gen. (1901) 279, that a prisoner transferred from a reformatory to a state prison under section 11 of chapter 711, Laws of 1887, prior to the passage of chapter 378, Laws of 1900, was to be regarded as confined under an indeterminate sentence, as defined in the latter Act, and was therefore eligible for parole as therein provided.

§ 297. Transfer of convicts from state prisons to reformatories. Whenever there is unoccupied room in either of said reformatories, the state board of managers may make a requisition upon the superintendent of state prisons, for a sufficient number of well-behaved and most promising convicts under thirty years of age who are confined in a state prison because of a first offense, and the superintendent of state prisons shall transfer such convicts to such reformatory for education and treatment under the rules thereof. The said board of managers shall receive and detain the prisoners so transferred for the terms of their sentences, if such sentences are for fixed terms, less the commutation of imprisonment if earned, that would have been allowed to them for good conduct if they had completed their terms in the state prisons from which they were transferred. If such prisoners are confined under an indeterminate sentence, they may be paroled and discharged as are prisoners confined in a state prison, except that the said board of managers shall constitute a board of parole for the purpose of paroling and discharging such prisoners, and such board shall make rules for such parole and discharge not

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inconsistent with law and in general conformity with the rules made by the parole boards of the state prisons.

This section was derived from L. 1900, ch. 378, § 17.

§ 298. Control and discipline of prisoners at reformatories. The state board of managers shall maintain such control over all prisoners committed to their custody, as shall prevent them from committing crime, best secure their self-support and accomplish their reformation. The discipline to be observed shall be reformative, and the board of managers may use such means of reformation consistent with the security and improvement of the prisoners, as they may deem expedient. The prisoners may be employed in agricultural or mechanical labor as a means of securing their support and reformation.

This section was derived from L. 1900, ch. 378, § 18.

Corporal punishment.— The statutes prohibiting corporal punishment in prisons are applicable to reformatories. Op. Atty.-Gen. (1899) 377.

§ 299. Register of prisoners at reformatories. The state board of managers shall cause to be entered in a register the date of the admission of each prisoner received in each of said reformatories, the name, age, nativity and nationality of such prisoner, and also such other ascertainable facts relating to parentage and early social influences as seem to indicate the constitutional and acquired defects and tendencies of the prisoner, and based upon these, an estimate of the then present condition of the prisoner and the best probable plan of treatment. There shall also be entered upon such register, quarterly or oftener, minutes of observed improvement or deterioration of character, notes as to methods of treatment employed, all orders or alterations affecting the standing or situation of such prisoner, the circumstances of his final release and any subsequent facts relating to his personal history which may be brought to their knowledge.

This section was derived from L. 1900, ch. 378, § 19.

§ 300. Parole of prisoners at reformatories. The state board of managers may allow any prisoner confined in either of said reformatories to go upon parole outside of the reformatory building and inclosures, pursuant to the rules of the board of managers. A person so paroled shall remain in the legal custody and under

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the control of the board, until his absolute discharge, as provided by law. No personal appearances before the board shall be permitted in behalf of the parole or discharge of any prisoner.

This section was derived from L. 1900, ch. 378, § 20.

Time on parole as part of term of imprisonment.—The period of time during which a prisoner is paroled from a reformatory must be counted as a portion of the time of his term of imprisonment. Op. Atty.-Gen. (1901) 195.

§ 301. Retaking of paroled prisoners of reformatories. If the state board of managers has reasonable cause to believe that a paroled prisoner has violated the conditions of his parole, the board may issue its warrant certified by its secretary, for the retaking of such prisoner at any time prior to his absolute discharge. The time within which the prisoner must be retaken shall be specified in the warrant. Such warrant may be issued to an officer of the reformatory or to any peace officer of the state, who shall execute the same by taking such prisoner into custody within the time specified in the warrant. Thereupon such officer shall return such prisoner to the reformatory, where he may be retained for the remainder of the maximum term provided by law.

This section was derived from L. 1900, ch. 378, § 21.

Constitutionality.— The provision of the statute authorizing the release of prisoners on parole by the state board of managers of reformatories and their subsequent rearrest upon violation of the parole, does not violate the constitutional principle of the separation of the judicial, legislative and executive departments of the government. People v. Flynn, (1907) 55 Misc. 22, 105 N. Y. S. 551.

Term of service of prisoner violating parole.—A paroled prisoner violating his parole must, when captured, serve the unexpired period of his maximum term computed according to the actual portion served. Op. Atty.-Gen. (1902) 348.

§ 302. Rules of reformatories. The state board of managers shall make rules, not inconsistent with law:

1. Prescribing the conditions under which prisoners may be paroled or conditionally released.

2. Regulating the retaking and re-imprisonment of such prisoners.

3. Providing for the employment, discipline, instruction and education of the prisoners. Such rules shall be adopted by the resolution of the board of managers, passed at a meeting thereof, at which a majority of its members shall be present. All rules adopted and in force shall be printed and a copy thereof

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distributed to each officer, employee and prisoner in each of said reformatories.

This section was derived from L. 1900, ch. 378, § 22.

Compensation to officers retaking prisoner.— The board of managers of a reformatory may make reasonable regulations concerning the allowance of fees and compensation to sheriffs and other officers for services in the retaking of paroled prisoners. Op. Atty.-Gen. (1901) 299.

§ 303. Marks for good conduct at reformatories; records filed with secretary of state. The state board of managers shall adopt a uniform system of marks by means of which shall be determined the number of marks or credits to be earned by each prisoner sentenced to either of said reformatories, as the condition of increased privileges, or of release from their control, which system shall be subject to revision from time to time. Each prisoner shall be credited for good personal demeanor, diligence in labor and study, and for results accomplished, and be charged for dereliction, negligence and offenses. Each prisoner's account of marks or credits shall be made known to him as often as once in each month. The said board of managers shall make rules by which each prisoner shall be permitted to see and converse with some member of the board of managers at stated periods. An abstract of the record in the case of each prisoner confined in each of said reformatories shall be made semi-annually, showing the date of admission, the age, the crime, place of conviction, court or judge by whom sentenced, the situation at the time of making such abstract, whether in a reformatory, or state prison, the hospital for insane criminals or elsewhere, whether any and how much progress or improvement has been made, and the reason for release or continued custody or transfer as the case may be, the names of those deceased during said period, with cause of death. Such abstract shall be considered by the said board of managers at a regular meeting and filed with the secretary of state.

This section was derived from L. 1900, ch. 378, § 23.

§ 304. Absolute release from imprisonment from reformatories; discharge. When it appears to the state board of managers that there is strong or reasonable probability that any prisoner will remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, they shall

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issue to such prisoner an absolute release or discharge from imprisonment. Nothing herein contained shall be construed to impair the power of the governor to grant a pardon or commutation in any case.

This section was derived from L. 1900, ch. 378, § 24.

§ 305. Sentences for a definite period to reformatories. If, through oversight or otherwise, a person be sentenced to imprisonment in either of said reformatories for a definite period of time, such sentence shall not, for that reason, be void, but the person so sentenced shall be entitled to the benefits and subject to the liabilities of this article, in the same manner and to the same extent as if such sentence had been made for an indefinite period of time in the manner provided by the penal law.

This section was derived from L. 1900, ch. 378, § 25
Indeterminate sentences: see PENAL LAW, § 2189.

§ 306. Supervision of prisoners paroled from reformatories. The state board of managers may appoint and at pleasure remove suitable persons in any part of the state, who shall supervise paroled prisoners and perform such other lawful duties as may be required of them by such board. Such persons shall be subject to the direction of the board. They may be paid a reasonable compensation for their services and expenses, which shall be a charge upon and paid from the funds of said reformatories.

This section was derived from L. 1900, ch. 378, § 26.
Private corporation as parole officer.—The present section does not authorize the appointment or employment of private corporations to perform the functions of parole officers. Op. Atty.-Gen. (1912) 299.
This section was cited in Op. Atty.-Gen. (1901) 195, in connection with the construction of section 300. See supra, § 300, note.

§ 307. Sentence to reformatories. Any person who shall be convicted of an offense punishable by imprisonment in either of said reformatories, and who, upon such conviction, shall be sentenced to imprisonment therein, shall be imprisoned according to this article, and not otherwise. The term of such imprisonment of any person so convicted and sentenced shall be terminated by the state board of managers, as authorized by this article; but such imprisonment shall not exceed the maximum term provided

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by law for the crime for which the prisoner was convicted and sentenced.

This section was derived from L. 1887, ch. 711, § 9.

Imprisonment when sentenced to a reformatory: see PENAL LAW, § 2195.

Constitutionality.— The statute authorizing sentences to reformatories without fixing a term of imprisonment is not unconstitutional as encroaching upon the judicial functions, nor does it contravene the provisions of section 5, article 4, of the state constitution, which vests the pardoning power in the governor. People v. Madden, (1907) 120 App. Div. 338, 105 N. Y. S. 554.

Person convicted of two crimes.—A person sentenced to a reformatory, convicted of two crimes, can be confined there only for a term not to exceed the maximum provided for one of the crimes. Op. Atty.-Gen. (1893) 101.

Confinement of federal prisoners in reformatories.— No provision of law exists for the confinement in state reformatories of persons convicted in United States courts. Op. Atty.-Gen. (1893) 358.

Release of prisoner to serve state prison sentence for crime committed in reformatory.— Where a prisoner in a reformatory commits a crime therein and is sentenced therefor to a term in a state prison, he should not be released for the service of his state prison term until after the expiration of the maximum term for which he could have been sentenced in the first instance. Op. Atty.-Gen. (1890) 149.

Cited.— The statute embodying the present section was cited in People v. Becker, (1912) 78 Misc. 666, 138 N. Y. S. 771; Matter of Kenny, (1898) 23 Misc. 9, 49 N. Y. S. 1037, affirmed 30 App. Div. 624, 53 N. Y. S. 1111; Op. Atty.-Gen. (1895) 316.

§ 308. State to pay expenses of trial of convict committing crime in reformatory. Whenever any convict in either of said reformatories shall be indicted and tried for any offense committed by such convict during the time of his imprisonment in a reformatory in this state, the expenses of such trial, and in case of conviction for murder in the first degree, the expenses of executing the judgment or sentence of the court, shall be paid by the state, and sections seventeen and eighteen of this chapter relating to the statement of the expenses incurred and the payment of the same are applicable thereto.

This section was derived from L. 1882, ch. 389, §§ 1–3.

Cited.— The statute embodying the present section was cited in Cayuga County v. State, (1897) 153 N. Y. 279, 49 N. E. 288; Gubner v. McClellan, (1909) 130 App. Div. 716, 728, 115 N. Y. S. 755, 764.

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ARTICLE 12

PENITENTIARIES

Section 320. Contracts by boards of supervisors for keeping prisoners.
321. Convicts in penitentiary to be confined at labor.
322. Fees of sheriffs for transporting convicts to a penitentiary.
323. Punishment of prisoners.
324. Money and transportation to be furnished prisoners on discharge.
325. *Minor prisoners not to be kept with adult prisoners.

§ 320. Contracts by boards of supervisors for keeping prisoners. It shall be lawful for the several boards of supervisors in the several counties of this state to enter into an agreement with the board of supervisors of any county having a penitentiary therein, or with any person in their behalf by them appointed, to receive and keep in the said penitentiary any person who may be sentenced to confinement therein by any court or magistrate, in any of the said several counties of this state, for any term not less than sixty days. Whenever such agreement shall have been made, it shall be the duty of the said several boards of supervisors of the several counties aforesaid, to give public notice thereof, specifying in such notice the period of the continuance of such agreement, which notice shall be published in such newspapers, printed in said several counties, not less than two, and for such period of time, not less than four weeks, as the several boards of supervisors of said several counties shall direct.

This section was derived from L. 1859, ch. 289, as amended by L. 1874, ch. 209, § 1.

Sentence under section of persons not punishable by imprisonment in state prison: see PENAL LAW, § 2196.

Constitutionality.— This section is constitutional and valid. Brown v. People, (1878) 75 N. Y. 437.

Cited.— This section was cited in People v. Warden, (1913) 154 App. Div. 473, 139 N. Y. S. 212; People v. Finucan, (1912) 151 Div. 92, 135 N. Y. S. 936; People v. Craig, (1908) 60 Misc. 529, 112 N. Y. S. 781, affirmed 129 App. Div. 851, reversed (1909) 195 N. Y. 190; People v. Webster, (1894) 8 Misc. 133, 28 N. Y. S. 646; Kings County v. Queens County, (1892) 64 Hun 195, 18 N. Y. S. 883; Op. Atty.-Gen. (1910) 481; Op. Atty.-Gen. (1903) 232.

* This section, added by L. 1916, ch. 394, was enacted without a heading. The heading has been added for facility of reference.

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§ 321. Convicts in penitentiary to be confined at labor. It shall be the duty of the agent and warden of each of the penitentiaries in this state to require of every able-bodied convict confined therein as many hours of faithful labor in each and every day during his term, as shall be prescribed by the rules of such penitentiary, [1]and the board of supervisors of Erie county shall have power, if they deem it proper, to employ convicts sentenced to be confined in a penitentiary, situate within the territorial limits of such county, and liable to be employed at hard labor, upon any work being prosecuted by and within such county, and such boards of supervisors shall have power to make all necessary appointments, rules and regulations for such employment within such county, including the right to fix a per diem compensation for such employment at a rate not to exceed ten cents.

This section was derived from L. 1875, ch. 25, § 1 pt. It was amended to read as above by L. 1916, ch. 366, § 1. The amendment is shown in the footnote.

Hours of labor.— Neither the present section nor the general power given the authorities of penitentiaries to adopt rules for the government and discipline of these institutions should be considered as permitting rules to be adopted in conflict with the provisions of section 171 of the Prison Law, which prohibits the employment of prisoners in penal institutions for more than eight hours per day. Op. Atty.-Gen. (1912) 96.

§ 322. Fees of sheriffs for transporting convicts to a penitentiary. The compensation to sheriffs for conveying convicts to a penitentiary form a county prison shall be the same as is prescribed in section twelve for conveying convicts to a state prison.

This section was derived from L. 1877, ch. 128, § 1 pt.

§ 323. Punishment of prisoners. Section one hundred and fifty-three of this chapter relating to the punishment of prisoners in state prisons is applicable to prisoners confined in penitentiaries.

This section was derived from R. S., pt. 4, ch. 3, tit. 2, § 87, as amended by L. 1889, ch. 382, § 1.

§ 324. Money and transportation to be furnished prisoners on discharge. It shall be the duty of the superintendent of a county penitentiary to furnish to each convict, male or female, who shall have been convicted of a felony, and imprisoned therein in pursuance of the provisions of statute, upon his or her discharge from

[1] Remainder of section new.

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the penitentiary, by pardon or otherwise, necessary clothing not exceeding twelve dollars in value, except for the time between the first day of November and the first day of April, when clothing not exceeding eighteen dollars in value may be given; and a sum of money not exceeding, on an average, five dollars, as the superintendent may deem proper and necessary; and a railroad ticket or tickets for the transportation of one person from the penitentiary to the place of his or her conviction, or to such other place as said convict may designate at no greater distance from the penitentiary than the place of conviction. It shall be the duty of the superintendents of said penitentiaries to make a return to the comptroller of this State, under oath, on the thirtieth day of Sepember of each year, in which he shall fully set forth the name of each convict received in said penitentiaries by virtue of statute, in what court convicted, before what presiding justice or judge, the offense for which conviction was had, the date of such conviction and length of sentence, date of reception of such convict at such penitentiaries, and the date of his or her discharge therefrom; and in detail, the sums of money paid by them under the foregoing provisions of this section. The comptroller shall thereupon audit and allow to such penitentiaries such sum as may be found due to them, under the foregoing provisions, during the year preceding said thirtieth day of June, and shall draw his warrant upon the treasury of the state in favor of the superintendent of each penitentiary, for the amount so audited and allowed, payable out of any money in the treasury not otherwise appropriated.

This section was derived from L. 1879, ch. 471, as amended by L. 1908, ch. 94. It was amended to read as above by L. 1916, ch. 118, § 26. The amendment changed the word "September" in the last sentence of the section to "June."

Prisoner convicted of libel as entitled to allowances.— Criminal libel is not a felony, and one convicted and sentenced therefor is not entitled, upon his discharge from a penitentiary, to the clothes and money allowed to prisoners upon discharge by the present section. Op. Atty.-Gen. (1890) 90.

§ 325. *[Minor prisoners not to be kept with adult prisoners.] Prisoners who are minors, detained in any county penitentiary, shall not be placed, or kept, or allowed to be, at any time, with any adult prisoner, or prisoners, in any room, dormitory, cell, tier or corridor of the buildings of such institution, or on its

*As enacted this section was without heading. The above heading has been added for facility of reference.

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grounds, or, while for any purpose, outside such buildings or grounds. Such minor prisoners shall not be placed or kept or allowed to be, at any time, with any adult prisoner or prisoners, in any other room or subdivision of the buildings of such institution unless separately grouped in such manner as to make intercommunication with adult prisoners impossible.

New. Added by L. 1916, ch. 394.

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ARTICLE 13

JAILS

Section 340. Charges by sheriff for food and drink prohibited.
341. Gratuities to sheriff from prisoner prohibited.
342. Regulations of rates of charges against certain persons arrested.
343. Prisoner kept in house other than jail may order necessaries.
344. Charges by officer for rent or fee of any kind prohibited.
345. Civil and criminal prisoners to be kept separate.
346. Males and females to be kept separate.
347. Either of several jails may be used.
348. Jail physician.
349. Liquors not to be brought into nor sold within jails.
350. Permit to bring liquor into jail.
351. When jail becomes unfit another to be designated.
352. Annulment of designation of jail to take place of unfit jail.
353. Proceedings where jail in contiguous county designated in place of unfit jail.
354. Removal of prisoners in case of fire.
355. Removal of sick prisoners from jail.
356. Officer to make designation of jail where county judge or presiding judge of appellate division in first department is absent.
357. Jail liberties in certain counties.
358. Jail liberties in other counties.
359. Laying out jail liberties.
360. Copy of resolution establishing or altering jail liberties to be kept posted in jail.

County Jails: see COUNTY LAW, §§ 90–101, 183, 238.

§ 340. Charges by sheriff for food and drink prohibited. A sheriff or other officer shall not charge a civil prisoner with any sum of money, or demand, or receive from him money, or any valuable thing, for any drink, victuals or other thing, furnished or provided for the officer, or for the prisoner, at any tavern, alehouse, or public victualing or drinking house.

This section was derived from Code Civ. Pro., § 113.

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§ 341. Gratuities to sheriff from prisoner prohibited. A sheriff or other officer shall not demand or receive from a civil prisoner, while in his custody, a gratuity or reward upon any pretence, for keeping the prisoner out of jail; for going with him or waiting for him to find bail, or to agree with his adversary; or for any other purpose.

This section was derived from Code Civ. Pro., § 114.

§ 342. Regulation of rates of charges against certain persons arrested. If a person arrested in a civil cause is kept in a house, other than the jail of the county, the officer arresting him, or the person in whose custody he is, shall not demand or receive from him any greater sum, for lodging, drink, victuals, or any other thing, than has been theretofore prescribed by the court of sessions or county court of the county; or, if no rate has been prescribed by the court of sessions or county court, than is allowed by a justice of the peace of the same town or city, upon proof that the lodging or other thing was actually furnished, at the request of the prisoner. And such an officer or person shall not, in any case or upon any pretext, demand or receive compensation for strong, spirituous, or fermented liquor, or wine, sold or delivered to the prisoner.

This section was derived from Code Civ. Pro., § 115.

§ 343. Prisoner kept in house other than jail may order necessaries. A civil prisoner arrested and kept in a house, other than the jail of the county, may send for and have beer, ale, cider, tea, coffee, milk, and necessary food, and such bedding, linen and other necessary things, as he thinks fit, from whom he pleases, without detention of the same or any part thereof by, or paying for the same, or any part thereof to, the officer arresting him, or the person in whose custody he is.

This section was derived from Code Civ. Pro., § 116.

§ 344. Charges by officer for rent or fee of any kind prohibited. A sheriff, jailer, or other officer, shall not demand or receive money, or any valuable thing, for chamber rent in a jail; or any fee, compensation, or reward, for the commitment, detaining in

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custody, release, or discharge of a civil prisoner, other than the fees expressly allowed therefor by law.

This section was derived from Code Civ. Pro., § 117.

§ 345. Civil and criminal prisoners to be kept separate. A prisoner, arrested in a civil cause, must not be kept in a room, in which any prisoner, detained on a criminal charge or conviction, is confined.

This section was derived from Code Civ. Pro., § 123.

§ 346. Males and females to be kept separate. Male and female civil prisoners must not be put in the same room; except that a husband and his wife may be put or kept together, in a room wherein there are no other prisoners.

This section was derived from Code Civ. Pro., § 124.

§ 347. Either of several jails may be used. The sheriff of a county, in which there is more than one jail, may confine a civil *and criminal prisoner in either; and may remove him from one jail to another, within the county, whenever he deems it necessary for his safe-keeping, or for his appearance at court.

This section was derived from Code Civ. Pro., § 122.

§ 348. Jail physician. The board of supervisors of each county, except New York, must appoint some reputable physician, duly authorized to practice medicine, as the physician to the jail of the county. If there is more than one jail they must appoint a physician to each. The physician to a jail holds his office at the pleasure of the board which appointed him, except in the county of Kings. In that county, the term of his office is three years.

This section was derived in part from Code Civ. Pro., § 126. For remainder of section, see Greater New York Charter.

Jail physicians as affected by Civil Service Law.— Physicians to county jails are within the classified service under the Civil Service Law, and appointments to that office must be made in accordance with that law. Matter of Phillips, (1910) 139 App. Div. 365, 124 N. Y. S. 60, affirmed (1911) 200 N. Y. 521, 93 N. E. 1129.

Cited.— This section was cited in People v. Oneida County, (1909) 65 Misc. 327, 121 N. Y. S. 372.

* So in original.

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§ 349. Liquors not to be brought into nor sold within jails. Strong, spirituous, or fermented liquor, or wine, shall not, on any pretense, be sold within a building used and established as a jail. Spirituous, fermented or other liquor, except cider, and that quality of beer called table beer, shall not be brought into a jail for the use of a person confined therein, without a written permit by the physician to the jail, which must be delivered to and kept by the keeper thereof, specifying the quantity and kind of liquor which may be furnished, the name of the civil prisoner for whom, and the time during which the same may be furnished.

This section was derived from Code Civ. Pro., § 128.

Furnishing drugs or liquors to prisoners: see PENAL LAW, § 1691; LIQUOR TAX LAW, § 29, subd. 6.

§ 350. Permit to bring liquor into jail. A permit by a jail physician as specified in the last section shall not be granted, unless the physician is satisfied, that the liquor allowed to be furnished is necessary for the health of the civil prisoner, for whose use it is permitted and that fact must be stated in the permit.

This section was derived from Code Civ. Pro., § 129.

§ 351. When jail becomes unfit another to be designated. If there is no jail in a county; or the jail becomes unfit or unsafe for the confinement of some or all of the prisoners, civil or criminal, or is destroyed by fire or otherwise; or if a pestilential disease breaks out in the jail, or in the vicinity of the jail, and the physician to the jail certifies that it is likely to endanger the health of any or all of the prisoners in the jail; the county judge, or, in the city and county of New York, the presiding justice of the appellate division of the supreme court of the first department, must, by an instrument in writing, filed with the clerk of the county, designate another suitable place within the county, or the jail of a contiguous county, for the confinement of some or all of the prisoners, as the case requires. The place so designated thereupon becomes, to all intents and purposes, except as otherwise prescribed in this article, the jail of the county for which it has been so designated, and the purposes expressed in the instrument designating the same.

This section was derived from Code Civ. Pro., § 135.

Cited.— This section was cited in Matter of Boyce, (1904) 43 Misc. 297, 88 N. Y. S. 841.

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§ 352. Annulment of designation of jail to take place of unfit jail. The designation may be modified or revoked, by the judge making the same, by a like instrument in writing, filed with the clerk of the county.

This section was derived from Code Civ. Pro., § 136.

§ 353. Proceedings where jail in contiguous county designated in place of unfit jail. The county clerk must serve a copy of the designation, duly certified by him, under his official seal, on the sheriff and keeper of the jail of a contiguous county so designated. The sheriff of that county must, upon the delivery of the sheriff of the county which the designation is made, receive into his jail, and there safely keep, all persons who may be lawfully confined therein, pursuant to this article; and he is responsible for their safe-keeping, as if he was the sheriff of the county for which the designation is made.

This section was derived from Code Civ. Pro., § 137.

§ 354. Removal of prisoners in case of fire. If, by reason of a jail, or a building near a jail, being on fire, there is reason to apprehend that some or all of the prisoners confined in the jail, may be injured, or may escape, the sheriff or keeper of the jail may, in his discretion, remove them to some safe and convenient place, and there confine them, until they can be safely returned to the jail, or, if the jail is destroyed, or so injured, that it is unfit or unsafe for the confinement of the prisoners, until a designation is made, as prescribed in section three hundred and fifty-one of this article.

This section was derived from Code Civ. Pro., § 143.

§ 355. Removal of sick prisoners from jail. If the physician to a jail, or, in case of a vacancy, a physician acting as such, and the warden or jailer, certify in writing, that a prisoner confined in the jail in a civil cause, is in such a state of bodily health that his life will be endangered unless he is removed to a hospital for treatment, the county judge, or, in the city and county of New York, one of the justices of the supreme court, must, upon application, make an order, directing the removal of the prisoner to a hospital within the county designated by the judge; or, if there is none, to such nearest hospital as the judge directs; that the

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prisoner be kept in the custody of the chief officer of the hospital until he has sufficiently recovered from his illness, to be safely returned to the jail; that the chief officer of the hospital then notify the warden or jailer, and that the latter thereupon resume custody of the prisoner.

This section was derived from Code Civ. Pro., § 127 pt.

§ 356. Officer to make designation of jail where county judge or presiding judge of appellate division in first department is absent. If the county judge, or the presiding justice of the appellate division of the supreme court of the first department, is absent or unable to act, or his office is vacant, a designation, or the revocation or modification thereof, as prescribed in this article, may be made, in any county, except New York, by the special county judge or the district attorney, or, in the city and county of New York, by any justice of the appellate division.

This section was derived from Code Civ. Pro., § 144.

§ 357. Jail liberties in certain counties. The following are the liberties of the jail for each of the counties specified, to wit: For the county of New York, the whole of said county; for the county of the Bronx, the whole of said county; for the county of Onondaga, the whole of the city of Syracuse; for the county of Monroe, the whole of the city of Rochester; for the county of Erie, the whole of the city of Buffalo; for the county of Dutchess, the whole of the city of Poughkeepsie; for the county of Kings, the whole of that county; for the county of Albany, the whole of the city of Albany; for the county of Jefferson, the whole of the city of Watertown; for the county of Herkimer, the whole of the village of Herkimer; for the county of Rensselaer, the whole of the city of Troy; for the county of Niagara, the whole of the city of Lockport; for the county of Steuben, the whole of the village of Bath; for the county of Nassau, the whole of the town of Hempstead; for the county of Broome, the whole of the city of Binghamton; for the county of Genesee, the whole of the village of Batavia.

This section was derived from Code Civ. Pro., § 145. It was amended to read as above by L. 1911, ch. 174; L. 1915, ch. 62. The amendment by L. 1911, ch. 174, added the words "for the county of Genesee, the whole of the village of Batavia." The amendment by L. 1915, ch. 62, added the words, "for the county of the Bronx, the whole of said county."

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Cited.— This section was cited in Rosenzweig v. United States Fidelity, etc., Co., (1914) 151 N. Y. S. 237.

It was cited in Syrkin v. Kesner, (1916) 175 App. Div. 321, 161 N. Y. S. 924, in connection with the construction of section 358. See infra, § 358 note.

§ 358. Jail liberties in other counties. The liberties of the jail in each of the other counties of the state, as heretofore established, shall continue to be the liberties thereof, until they are altered, or new liberties are established, as prescribed by law.

This section was derived from Code Civ. Pro., § 146.

Breach of jail liberties where territory is detached for new county.— It was held in Syrkin v. Kesner, (1916) 175 App. Div. 321, 161 N. Y. S. 924, that the presence of a New York county prisoner, with jail liberties, in the territory included in Bronx county after the erection of that territory into a separate county but before jail liberties had been laid out in Bronx county, did not constitute an escape.

Cited.— This section was cited in Rosenzweig v. United States Fidelity, etc., Co., (1914) 151 N. Y. S. 237.

§ 359. Laying out jail liberties. Where the liberties of a jail are altered or established, by resolution of the board of supervisors, as prescribed by law, a space of ground, adjacent to the jail, and not exceeding five hundred acres in quantity, must be laid out as the jail liberties, in a square or rectangle as nearly as may be; but a stream of water, canal, street, or highway, may be adopted as an exterior line, notwithstanding it is not in a straight line, or is not at right angles with the other exterior line of the liberties. A resolution establishing or altering jail liberties, must contain a particular description of their boundaries; and as soon as may be after its adoption, the boundaries must be designated by monuments, inclosures, posts, or other visible and permanent marks, at the expense of the county.

This section was derived from Code Civ. Pro., § 147.

Cited.— This section was cited in Roach v. O'Dell, (1884) 33 Hun 320, affirmed (1885) 99 N. Y. 635, 1 N. E. 408.

It was cited in Syrkin v. Kesner, (1916) 175 App. Div. 321, 161 N. Y. S. 924, in connection with the construction of section 358. See supra, § 358 note.

§ 360. Copy of resolution establishing or altering jail liberties to be kept posted in jail. The county clerk must, within one week after a resolution of the board of supervisors, establishing or altering jail liberties, has been filed in his office, deliver an exemplified copy thereof to the keeper of the jail, who must keep the same exposed to public view, in an open and public part of the

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jail, and exhibit it to each person admitted to the liberties of the jail, at the time of his executing a bond for that purpose.

This section was derived from Code Civ. Pro., § 148.

Committee for insane life convict.— The Supreme Court has jurisdiction to entertain proceedings and direct the appointment of a committee of the estate of a life convict, although the convict before the commencement of the proceedings has become insane and has been transferred to a state hospital for insane convicts. Trust Co. of America v. State Deposit Co., (1907) 187 N. Y. 178, 79 N. E. 996, affirming 109 App. Div. 665, 96 N. Y. S. 585.

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ARTICLE 14

Care of Property of Person Confined for Life

Section 370. Who may apply for appointment of committee.
371. Application for appointment of committee.
372. Payment of debts and application of property.
373. Sale of property.
374. Report of committee; compensation.
375. Proceedings on pardon or commutation of sentence.

§ 370. Who may apply for appointment of committee. Whenever any person has been convicted and sentenced to imprisonment in this state for life, the husband, wife, relatives or next of kin or any creditor of such person may apply to the supreme court, at a special term thereof in the judicial district in which said person resided at the time of his conviction, for the appointment of a committee of such person's estate, both real and personal.

This section was derived from L. 1889, ch. 401, § 1.

§ 371. Application for appointment of committee. Such application shall be made upon personal notice of not less than twenty days to such convicted person and to the district attorney of the county where the conviction was had, and upon notice to such other persons as would be entitled to notice of application for the probate of the will of such convicted person if he were then dead leaving a will of real and personal property, to be given in like manner as notice of application for such probate. The application shall, among other things, set forth the amount of the property of such person, and the names and residences of his heirs-at-law and next of kin, as near as the same are known or can be ascertained by the applicant. Upon such application and due proof of the service of the notice herein required, the court may, in its discretion, appoint a committee of the estate of such convicted person. The person or persons so appointed as such committee shall file a bond in the county clerk's office of such county, and in such an amount and with such sureties as the said court shall direct. A copy of the order appointing such committee certified by the clerk of the county in which the order is filed, shall

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be filed in every county in which any real estate of such convicted person is situated.

This section was derived from L. 1889, ch. 401, § 2.

Proof of service of notice.— Due proof of service of notice of application for the appointment of a committee is not shown where the only evidence of service is an admission which purports to be signed by the convict in the presence of a witness, but the admission is not acknowledged, nor the genuineness of either signature proved in any way. Matter of Stephani, (1894) 75 Hun 188, 26 N. Y. S. 1039.

§ 372. Payment of debts and application of property. The court shall direct the payment of the debts of such convicted person from said property, and may also in its discretion direct the application of the income, and if need be, of the principal of such property, to the support, education and maintenance of such persons as the said convicted person would be legally liable to support if he had not been so convicted. Or the court may direct the care and preservation of the income and principal of such estate until the natural death of the person so convicted.

This section was derived from L. 1889, ch. 401, § 3.

§ 373. Sale of property. The court may from time to time, in the manner prescribed by the code of civil procedure upon the sale of the property of an infant, if it deems it necessary, or that the estate will be benefited thereby, direct the sale of any of the real or personal property by said committee, and investment of the proceeds of such sale. The court shall control said committee in the performance of his duties; and may from time to time modify and alter its direction or orders in any matter pertaining to the estate.

This section was derived from L. 1889, ch. 401, § 4.

§ 374. Report of committee; compensation. The committee so appointed shall annually render an account to the court of his management and his receipts and disbursements, and transmit a copy thereof to the person so convicted. The court may grant such compensation to the committee as it deems proper, not exceeding, however, the amount that may be allowed to an administrator.

This section was derived from L. 1889, ch. 401, § 5.

§ 375. Proceedings on pardon or commutation of sentence. Should said convicted person be pardoned, or his sentence be

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commuted, the court shall direct the committee to transfer to him, after his discharge from prison, all of said property remaining in his hands not lawfully applied or used as herein provided for, and upon the death or such convicted person not pardoned or commuted as aforesaid, the court shall direct the distribution of such property as upon the natural death of a person not convicted.

This section was derived from L. 1889, ch. 401, § 6.

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ARTICLE 15

CARE OF PROPERTY OF PERSON CONFINED FOR LESS THAN LIFE

Section 390. When and to what court application to be made.
391. Who may apply.
392. Creditor must relinquish security.
393. Contents of petition.
394. Copy of sentence and affidavit to be presented.
395. Proceedings upon presentation of the papers.
396. Proceedings on return of order to show cause.
397. Effect of order appointing trustee.
398. Removal of trustee; appointment of new trustee.
399. Prisoner's property; how applied.
400. Prisoner's property to be delivered to him on his discharge.
401. Application of this article to persons heretofore sentenced.

§ 390. When and to what court application to be made. Where a person is imprisoned in a state prison, for a term less than for life; or in a penitentiary or county jail, for a criminal offense, for a longer term than one year; one or more trustees, to take charge of his property, may be appointed, as prescribed in this article, by the county court of the county, or the supreme court in the judicial district, where he resided at the time of his imprisonment, or if he was not then a resident of the state, where he is imprisoned.

This section was derived from Code Civ. Pro., § 2219.

§ 391. Who may apply. A petition for such an appointment may be presented by either of the following persons:

1. A creditor of the prisoner.
2. The prisoner's husband, wife, or child.
3. One or more of his next of kin, or, where he owns real property, of his heirs presumptive.
4. A relative whom he is bound to support.
5. Any relative or other person, in behalf of his infant child or children.

This section was derived from Code Civ. Pro., § 2220.

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§ 392. Creditor must relinquish security. A creditor of the prisoner, who has a judgment, mortgage, or other security, specified in section fifty-nine of the debtor and creditor law, can not apply for such an appointment, with respect to the debt so secured, unless he appends to or includes in his petition, the declaration, required by that section from a consenting creditor; which declaration has the same effect as the declaration of a consenting creditor, as therein specified.

This section was derived from Code Civ. Pro., § 2221.

§ 393. Contents of petition. The petition must be in writing, and verified by the affidavit of the petitioner, to the effect, that the matters of fact therein stated are true, to the best of the petitioner's knowledge and belief. It must set forth the facts, showing that the applicant is entitled to make the application, and that the application is made to the proper court; the name and residence of each person, who is entitled to make such an application, as prescribed in the last section but one, except the fifth subdivision thereof; and a brief description of the property, real and personal, of the prisoner, and the value thereof. If the applicant is a creditor, and not a resident of the state, he must annex to his petition, the papers specified in section sixty-two of the debtor and creditor law. If any of the facts, herein required to be set forth can not be ascertained by the petitioner, after the exercise of due diligence, that fact must be stated; and the court may, in its discretion, issue a subpœna, requiring any person to attend and testify, respecting any matter, which, in its opinion, ought to be more fully and certainly set forth.

This section was derived from Code Civ. Pro., § 2222.

§ 394. Copy of sentence and affidavit to be presented. The petition must be accompanied with a copy of the sentence of conviction of the prisoner, duly certified by the clerk of the court by which he was sentenced, under the seal thereof; together with an affidavit of the applicant, stating that the person so convicted is actually imprisoned thereunder.

This section was derived from Code Civ. Pro., § 2223.

§ 395. Proceedings upon presentation of the papers. Upon the presentation of the papers, the court may, in its discretion,

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make an order, either appointing one or more fit persons trustees of the property of the prisoner; or requiring all creditors of the prisoner, and all persons interested in his estate, to show cause, at a time and place specified therein, why such an appointment should not be made. In the latter case, the order must direct the manner of service thereof, by publication or otherwise.

This section was derived from Code Civ. Pro., § 2224.

§ 396. Proceedings on return of order to show cause. Upon the return of an order to show cause, made as prescribed in the last section, proof of the service thereof, as required thereby, must first be made; whereupon the court must hear the allegations and proofs of the creditors, and other persons interested in the estate, who appear. Where the prisoner is indebted to any person, the court must appoint one or more trustees, unless the persons interested in the prisoner's property pay the debt, or give such security, as the court prescribes, for the payment thereof, either absolutely, or contingently upon a recovery in an action; in which case or where the prisoner is not indebted, the court may grant or deny the prayer of the petition, as justice requires.

This section was derived from Code Civ. Pro., § 2225.

§ 397. Effect of order appointing trustee. The entry of the order, appointing one or more trustees, and the filing of the papers upon which it was granted, vests in the trustee or trustees all the right, title and interest of the prisoner, in and to any property, real or personal. Where the prisoner owns real property, an exemplified copy of the order must be recorded, in the proper office for recording deeds, in each county where the real property is situated.

This section was derived from Code Civ. Pro., § 2226.

§ 398. Removal of trustee; appointment of new trustee. Upon the application of any person, entitled to apply for an order, appointing trustees of the prisoner's property, and upon such a notice as the court prescribes, to the petitioner, and to such other persons interested, as the court thinks proper to designate, the court, by which the order was granted, may, in its discretion, remove any trustee, and appoint another in his place; or may

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appoint one or more additional trustees. The new trustee or trustees, so appointed, have the same power and authority, are vested with the same right, title, and interest, and are subject to the same duties and liabilities, as if he or they had been appointed by the original order.

This section was derived from Code Civ. Pro., § 2227.

§ 399. Prisoner's property; how applied. After deducting their commissions and expenses, allowed by law, and paying the prisoner's debts, the trustees may, from time to time, under the direction of the court by which they were appointed, apply the surplus of any money in their hands, to the support of the prisoner's wife and children, and of such other relatives as he is bound to support, and to the education of his children.

This section was derived from Code Civ. Pro., § 2228.

§ 400. Prisoner's property to be delivered to him on his discharge. When the prisoner dies, or is lawfully discharged from imprisonment, the trustee or trustees must deliver over to him, or to his legal representatives, all his property, remaining in their hands, after deducting therefrom their lawful expenses and commissions.

This section was derived from Code Civ. Pro., § 2229.

§ 401. Application of this article to persons heretofore sentenced. This article applies to a prisoner who has been sentenced before this chapter takes effect, and to his property; except where one or more trustees of his property have been theretofore appointed, by proceedings taken in pursuance of a statute then in force.

This section was derived from Code Civ. Pro., § 2230.

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ARTICLE 16

Laws Repealed; When to Take Effect

Section 420. Laws repealed.
421. When to take effect.

§ 420. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 421. When to take effect. This chapter shall take effect immediately.

Schedule of Laws Repealed.

Revised Statutes..	Part 4, titles 2, 3.....	All
*Revised Statutes..	Part 4, chapter 3, titles 2, 3.....	All

Laws of	Chapter	Section
1787.....	26.....	4, 5
1796.....	30.....	14–27, 29–36
1797.....	12.....	All
1797.....	41.....	All
1798.....	56.....	3–6, 8, 9, 13–15
1799.....	14.....	All
1800.....	60.....	6–12
1800.....	118.....	All
1801.....	121.....	All
1802.....	37.....	All
1802.....	68.....	All
1804.....	89.....	All
1804.....	109.....	20
1805.....	135.....	12, 13
1808.....	240.....	38
1809.....	164.....	22, 23
1810.....	185.....	All
1811.....	173.....	All
1812.....	155.....	All
R. L. 1813....	1.....	All
1814.....	200.....	24

* Inserted and expressly repealed by L. 1909, ch. 240, § 94, in effect April 22, 1909.

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Laws of	Chapter	Section
1816.....	15.....	All (40th Sess.)
1816.....	236.....	24
1817.....	269.....	1–6, 8–10, 12, 14–19
1818.....	53.....	All
1818.....	211.....	All
1819.....	83.....	All
1820.....	121.....	All
1820.....	185.....	All
1820.....	246.....	All
1821.....	224.....	All
1822.....	273.....	All
1823.....	160.....	All
1823.....	269.....	18
1824.....	76.....	2
1824.....	253.....	All
1825.....	25.....	All
1826.....	24.....	3
1826.....	74.....	All
1826.....	242.....	All
1827.....	12.....	All
1827.....	52.....	All
1828.....	6.....	All
1828.....	11.....	All
1828.....	150.....	All
1828.....	197.....	All
1828.....	21.....	1, ¶¶ 79, 298, 387, 531, 535, 538 (2d Meet.)
1829.....	13.....	All
1829.....	56.....	All
1829.....	220.....	All
1830.....	35.....	All
1830.....	77.....	All
1830.....	87.....	All
1830.....	181.....	All
1830.....	331.....	All
1831.....	4.....	All
1831.....	275.....	All
1832.....	35.....	All
1832.....	138.....	2

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Laws of	Chapter	Section
1832	277	All
1834	145	All
1834	146	All
1834	252	All
1835	104	All
1835	302	All
1836	171	1–5
1836	381	All
1837	92	All
1840	25	All
1840	204	All
1841	200	All
1842	148	All
1842	186	All
1844	245	All
1844	301	All
1844	321	All
1845	70	1, 2, 5, 6, 11–13
1845	335	All
1846	275	3–5
1846	324	4–8, 11
1847	45	All
1847	428	All
1847	460	29–156, 159–161
1847	497	All
1848	294	All
1849	123	All
1849	132	All
1849	141	All
1849	331	1
1850	306	3–6
1851	259	All
1851	431	All
1852	194	All
1853	458	All
1854	58	All
1854	223	All
1854	240	All
1855	456	All

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Laws of	Chapter	Section
1855.....	501.....	All
1855.....	527.....	All
1855.....	552.....	All
1857.....	94.....	All
1857.....	144.....	All
1858.....	139.....	All
1859.....	249.....	All
1859.....	289.....	All
1859.....	453.....	All
1859.....	470.....	All
1860.....	283.....	All
1860.....	399.....	All
1862.....	235.....	1
1862.....	403.....	All
1862.....	417.....	All
1863.....	291.....	All
1863.....	415.....	All
1863.....	465.....	All
1864.....	264.....	All
1864.....	300.....	All
1864.....	321.....	All
1865.....	43.....	All
1865.....	584.....	All
1865.....	600.....	All
1866.....	72.....	All
1866.....	330.....	All
1866.....	458.....	All
1866.....	667.....	All
1867.....	426.....	All
1868.....	599.....	All
1868.....	612.....	All
1869.....	574.....	1, 2, 4–9
1869.....	676.....	All
1869.....	841.....	All
1869.....	869.....	All
1870.....	108.....	All
1870.....	109.....	All
1870.....	427.....	All
1871.....	457.....	All

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Laws of	Chapter	Section
1872.....	782.....	All
1873.....	600.....	All
1874.....	209.....	1
1874.....	451.....	All
1875.....	25.....	All
1875.....	571.....	All
1875.....	596.....	All
1876.....	160.....	All
1876.....	193.....	1, part fixing compensation to sheriffs for transporting convicts.
1876.....	197.....	All
1876.....	207.....	All
1876.....	339.....	All
1877.....	24.....	All
1877.....	27.....	1, part relating to sheriff's mileage.
1877.....	107.....	All
1877.....	128.....	1, part relating to the compensation of sheriffs for conveying convicts.
1877.....	172.....	All
1877.....	173.....	All
1877.....	253.....	All
1877.....	312.....	All
1877.....	424.....	All
1878.....	148.....	All
1879.....	284.....	All
1879.....	373.....	All
1879.....	462.....	All
1879.....	471.....	All
1880.....	416.....	All
1881.....	442.....	695
1881.....	548.....	All
1882.....	389.....	All
1883.....	83.....	All
1883.....	468.....	All
1884.....	12.....	All
1884.....	21.....	All

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Laws of	Chapter	Section
1884.....	178.....	All
1884.....	356.....	All
1885.....	267.....	1
1886.....	21.....	1–9, 21, 22
*1886.....	21.....	10–19 inclusive.
1886.....	432.....	All
1886.....	485.....	All
1887.....	213.....	All
1887.....	711.....	1–6, 8; 9, except part beginning "and the courts" to end of sentence; 10–19
1888.....	440.....	All
1888.....	586.....	All
1889.....	36.....	1
1889.....	382.....	All
1889.....	401.....	All
1890.....	395.....	All
1890.....	559.....	All
1892.....	130.....	All
1892.....	336.....	All
1892.....	396.....	All
1892.....	587.....	2, 3
1893.....	306.....	All
1893.....	312.....	All
1893.....	386.....	All
1894.....	208.....	All
1894.....	266.....	All
1894.....	299.....	All
1894.....	465.....	All
1894.....	664.....	All
1894.....	737.....	All
1895.....	93.....	All
1895.....	372.....	All
1895.....	473.....	All
1895.....	730.....	All
1895.....	812.....	All
1895.....	1026.....	All

* Inserted and expressly repealed by L. 1909, ch. 240, § 97, in effect April 22, 1909.

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Laws of	Chapter	Section
1896.....	429.....	All
1896.....	430.....	All
1896.....	440.....	All
1897.....	216.....	All
1897.....	623.....	All
1898.....	133.....	All
1898.....	645.....	All
1899.....	600.....	All
1900.....	72.....	All
1900.....	348.....	All
1900.....	378.....	All
1900.....	498.....	All
1901.....	12.....	All
1901.....	193.....	All
1901.....	260.....	All
1901.....	388.....	All
1901.....	418.....	All
1902.....	244.....	All
1902.....	500.....	All
1903.....	137.....	All
1903.....	138.....	All
1903.....	447.....	All
1904.....	323.....	All
1904.....	425.....	All
1904.....	547.....	All
1904.....	709.....	All
1905.....	536.....	All
1906.....	684.....	All
1907.....	381.....	All
1907.....	467.....	All
1908.....	94.....	All
1908.....	232.....	All
1908.....	239.....	All
1908.....	251.....	All
Code Civil Procedure.....		113–117, 120, 122–124; 126, except part relating to county of New York; 127, first sentence; 128, 129, 135–137, 143–148, 2219–2230

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NOTES TO SCHEDULE OF REPEALS

Prepared by the Board of Statutory Consolidation and printed in their report of 1907, *at page* 4118.

L. 1820, Ch. 121. Section 2 has been expressly repealed; balance of act temporary.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1829, Ch. 13. Statute affected provides for imprisonment of female convicts at Mt. Pleasant prison. L. 1893, Ch. 306, § 9, provides for imprisonment of all women convicts at state prison for women at Auburn. Former act should be repealed.

L. 1829, Ch. 56. Provides for purchase of land and water privileges at Auburn prison, and appropriates moneys therefor. Temporary and obsolete.

L. 1829, Ch. 220. Provides for removal by New York city officials of female convicts from Greenwich to Mt. Pleasant prison. Temporary and obsolete.

L. 1831, Ch. 4. Appropriates moneys for Mt. Pleasant prison. Temporary and obsolete.

L. 1831, Ch. 275. Appropriates moneys for Mt. Pleasant prison and for chaplain at said prison. Temporary and obsolete.

L. 1832, Ch. 138, § 2. Relates to furnishing stone and coping from Mt. Pleasant prison for use on Capitol building and on grounds connected therewith. Temporary and obsolete.

L. 1834, Ch. 145. Authorizes agent at Mt. Pleasant prison to purchase land and to pay moneys due ex-agent. Temporary and obsolete.

L. 1834, Ch. 146. Authorizes agent at Auburn prison to purchase land, and also exempts firemen of Auburn prison from militia duty. Temporary and obsolete.

L. 1834, Ch. 252. Authorizes appointment of three commissioners to examine into state prisons. Temporary and obsolete.

L. 1840, Ch. 25. Sections 1 and 2 superseded by L. 1847, Ch. 497, § 4, which has been consolidated as § 14 of Prison Law; § 3 provides that comptroller shall pay interest and charges on claims of sheriffs for transporting prisoners. Inoperative and obsolete.

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L. 1842, Ch. 186. Authorizes agent at Auburn prison to convey land to the Auburn & Rochester railway. Obsolete.

L. 1845, Ch. 335. Provides for a water supply at Mt. Pleasant prison. Superseded by L. 1889, Ch. 382, § 1 (66).

L. 1846, Ch. 324, §§ 4-10. Appropriates moneys for Clinton prison. Temporary and obsolete. Section 9 contains repeal.

L. 1847, Ch. 45. Appropriates moneys for Clinton prison. Temporary and obsolete.

L. 1847, Ch. 428. Appropriates moneys for Clinton prison. Temporary and obsolete.

L. 1847, Ch. 460. An act for the better regulation of the county and state prisons and consolidating and amending the existing laws in relation thereto, and consisting of 161 sections. Sections 1–28, relating to county prisons, were repealed by L. 1892, Ch. 686, § 238, and included in the schedule of repeals of County Law. Sections 29–144, 146, were amended so as to read as follows. Sections 145, 147, 159 are consolidated in Prison Law, §§ 157, 159, 160. Section 148 superseded by Code Civil Procedure, § 1030. Section 149 is covered by Prison Law, § 153. Section 150 superseded by Code Civil Procedure, §§ 2008–2011. Sections 151, 156 superseded by Code Civil Procedure, § 832, and Code Criminal Procedure, § 392. Sections 152–154 superseded by L. 1896, Ch. 112, §§ 30, 34. Section 155 is covered by Code Civil Procedure, § 2008. Sections 157, 158 superseded by Code Criminal Procedure, §§ 297, 298. Section 160 states when act takes effect and repeals certain statutes. Section 161 providing that the act shall supersede and take the place of R. S., Pt. 4, Ch. 3, is dependent and made useless by the repeal of the other sections.

L. 1860, Ch. 399, § 14, in terms amends L. 1847, Ch. 460, § 156. In fact § 146 is intended.

L. 1847, Ch. 497. Section 1 was a repeal; § 2 has been repealed; §§ 3–5 consolidated in Prison Law, §§ 13–15; § 6 relating to transportation of convicts to house of refuge for juvenile delinquents is obsolete.

L. 1847, Ch. 499, § 1, subd. 2. Provides for salary of inspector of prisons. Superseded by L. 1877, Ch. 128, § 1.

L. 1849, Ch. 123. Relates to sheriff's fees for transporting convicts. Obsolete. See Prison Law, § 53.

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L. 1849, Ch. 141. Sections 1, 3–6 appropriate and direct the expenditure of money for maintenance of Sing Sing prison. Temporary and obsolete. Section 2 repealed and § 7 provides when act takes effect.

L. 1850, Ch. 306, §§ 3-5. Authorizes sale of ore at Clinton prison and provides for construction of plank road to Saranac Hollow. Obsolete.

L. 1851, Ch. 259. Appropriates moneys for Clinton prison. Temporary and obsolete.

L. 1851, Ch. 431. Appropriates moneys for Sing Sing and Auburn state prisons. Temporary and obsolete.

L. 1852, Ch. 194. Appropriates moneys for Clinton prison and to purchase Averill ore bed property. Temporary and obsolete.

L. 1854, Ch. 223. Authorizes appointment of commissioners to investigate the pecuniary affairs and conditions of state prisons. Temporary and obsolete.

L. 1855, Ch. 501. Appropriates moneys for paying debts of state prisons. Temporary and obsolete.

L. 1855, Ch. 527. Appropriates moneys for purchase of ore bed at Clinton prison. Obsolete.

L. 1857, Ch. 144. Appropriates moneys for improvements at Auburn prison. Temporary and obsolete.

L. 1858, Ch. 139. Superseded by L. 1859, Ch. 289, as amended by L. 1874, Ch. 209.

L. 1859, Ch. 249. Provides for sale of certain land near Auburn prison. Obsolete.

L. 1859, Ch. 289. Extends L. 1858, Ch. 139, and authorizes the supervisors of any county to contract for the use of a penitentiary in another county. Superseded by L. 1874, Ch. 209.

L. 1859, Ch. 453. Appropriates moneys for enlargement of state prisons. Obsolete.

L. 1859, Ch. 470. Provides for sale of Ossining prison lands. Temporary and obsolete.

L. 1862, Ch. 235, § 1. Authorizes taking of land for use of Sing Sing prison. Temporary and obsolete.

L. 1862, Ch. 417. Section 1 expressly repealed. Sections 2, 4, 5, amended "to read as follows." Section 3 superseded by L. 1886, Ch. 21, § 16. Section 6 is an inconsistent repeal and § 7 provides when act shall take effect.

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L. 1863, Ch. 291. Appropriates certain waters for use of Clinton prison and authorizes condemnation proceedings thereon. Temporary and obsolete. Superseded by L. 1889, Ch. 382.

L. 1863, Ch. 415. Section 1 provides for changing the word "thirteen" in first line of section 1 of chapter 417, Laws of 1862, to "twelve." Inoperative and obsolete; § 2 amended by L. 1864, Ch. 321, § 1; § 3 superseded by L. 1886, Ch. 21; § 4 relates to fees charged to visitors at prisons; no fees are now charged. Obsolete.

L. 1864, Ch. 264. Authorizes construction of railroad from Clinton prison to Northern railway. Obsolete.

L. 1864, Ch. 321. Relates to commutation of sentences for good conduct. Superseded by L. 1886, Ch. 21.

L. 1865, Ch. 584. Authorizes removal of female convicts from Sing Sing prison to penitentiaries at Rochester and Buffalo. Superseded by L. 1893, Ch. 306, §§ 9, 10. Obsolete.

L. 1866, Ch. 72. Requires warden of Clinton prison to furnish monthly estimates of expense of iron manufacturing in Clinton prison. Obsolete.

L. 1866, Ch. 667. Section 1 superseded by L. 1893, Ch. 306, §§ 9, 10; §§ 2 and 3 superseded by L. 1879, Ch. 471, §§ 1, 2; § 4 superseded by L. 1886, Ch. 21, and § 5 provides when act shall take effect.

L. 1867, Ch. 426. Provides for compensation of officers in state prisons. Temporary and obsolete.

L. 1868, Ch. 599. Provides for purchase of disinfectants for use in prisons. Superseded by L. 1889, Ch. 382, § 1 and L. 1875, Ch. 571, § 3 as amended by L. 1895, Ch. 372, § 2.

L. 1868, Ch. 612. Provides for working of quarry contract at Sing Sing prison. Obsolete.

L. 1868, Ch. 717, § 2 pt. Authorizes the comptroller to pay moneys for working quarries at Sing Sing. Obsolete.

L. 1869, Ch. 574, §§ 1, 2, 4-9. Section 5 was amended to read as follows; § 6 was superseded by L. 1886, Ch. 21; of the balance of act, §§ 1, 2 were superseded by L. 1893, Ch. 306, §§ 9, 10; § 4 superseded by L. 1879, Ch. 471; § 7 superseded by L. 1877, Ch. 128, § 1. Section 8 is an inconsistent repeal and § 9 provides when act shall take effect.

L. 1869, Ch. 676. Relates to lands for use of Clinton prison. Superseded by L. 1889, Ch. 382, § 1.

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L. 1869, Ch. 841. Authorizes removal of convicts from Sing Sing to Albany penitentiary. Obsolete.

L. 1870, Ch. 108. Approving site for Elmira reformatory. Temporary.

L. 1870, Ch. 109. Continues in force act as to compensation of officers in state prisons. Superseded by L. 1889, Ch. 382; L. 1893, Ch. 306, and L. 1904, Ch. 709.

L. 1870, Ch. 427. Authorizes appointment of building commissioners for Elmira reformatory. Temporary and obsolete.

L. 1871, Ch. 457. Consolidated in Prison Law, § 73.

L. 1872, Ch. 782. Provides for delivery of bodies of deceased convicts at Auburn prison to medical faculties of Buffalo and Syracuse universities. Superseded by L. 1896, Ch. 302.

L. 1873, Ch. 600. Authorizes appointment of building commissioners for Elmira reformatory. Temporary and obsolete.

L. 1874, Ch. 209, § 1. Consolidated in Prison Law, § 320.

L. 1875, Ch. 25. Section 1, pt. as to commutation of sentence superseded by L. 1886, Ch. 21; remainder consolidated in Prison Law, § 321. Section 2, when act takes effect.

L. 1875, Ch. 145, § 1, pt. Provides for salary of prison inspectors in state prisons. Obsolete.

L. 1875, Ch. 571. Provided that certain prisoners convicted of offenses punishable with imprisonment in state prisons might be confined in county penitentiaries. L. 1895, Ch. 372, amended L. 1875, Ch. 571. L. 1879, Ch. 471, authorized certain sums of money to be paid to prisoners confined in county penitentiaries pursuant to L. 1875, Ch. 571, upon their discharge therefrom. L. 1899, Ch. 600 repealed L. 1875, Ch. 571, § 1 and L. 1895, Ch. 372, § 1. Because of said repeal the acts mentioned above, viz., L. 1875, Ch. 571, L. 1879, Ch. 471 and L. 1895, Ch. 372, are now entirely obsolete and should be repealed.

L. 1875, Ch. 596. Provides for salaries of state prison officers. Superseded by L. 1889, Ch. 382, L. 1893, Ch. 306 and L. 1904, Ch. 709.

L. 1876, Ch. 160. Provides for investigation of Elmira reformatory and state prisons. Temporary and obsolete.

L. 1876, Ch. 197. Provides for continuance of Elmira reformatory and state prisons investigation. Temporary and obsolete.

L. 1877, Ch. 27, § 1, pt. Relates to sheriff's mileage and expenses. Superseded by L. 1900, Ch. 378, § 15.

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L. 1877, Ch. 128, § 1 pt. Consolidated in Prison Law, §§ 12, 322. Balance of act is special.

L. 1877, Ch. 172. Provides for imprisonment of female convicts. Superseded by L. 1893, Ch. 306. Inoperative and obsolete.

L. 1878, Ch. 148. Authorizes construction of railroad from Lake Champlain to Dannemora prison, and for the management and leasing when constructed; said railroad has been constructed and is now leased. All provisions except that relating to leasing which is consolidated as part of § 120, Prison Law, are obsolete.

L. 1879, Ch. 284. Superseded by L. 1900, Ch. 378, § 17.

L. 1879, Ch. 471. Relates to convicts confined in penitentiaries. See note to L. 1875, Ch. 571.

L. 1880, Ch. 416. Authorizes habeas corpus proceedings for convict witnesses. Superseded by sections 832, 2008–2010 of the Code of Civil Procedure, and section 714 of the Penal Code.

L. 1881, Ch. 548. Authorizes agent of Clinton prison to appropriate waters for use of Clinton prison. Superseded by L. 1889, Ch. 382, § 1 (66). Obsolete.

L. 1882, Ch. 389. Consolidated in Prison Law, §§ 16–18, 308.

L. 1883, Ch. 468. Provides for submitting to electors proposition to abolish contract labor from state prisons. Temporary and obsolete.

L. 1884, Ch. 12. Provides for commission to examine into operation of contract labor in prisons. Temporary and obsolete.

L. 1884, Ch. 21. Provides that superintendent of prisons shall not renew or extend any contract for convict labor. Superseded and abrogated by L. 1896, Ch. 429. Obsolete.

L. 1884, Ch. 356. Amends Code of Criminal Procedure, § 695. Consolidated in Prison Law, § 260.

L. 1885, Ch. 267, § 1. Provides for correction of errors in L. 1880, Ch. 416. Obsolete.

L. 1886, Ch. 21. Section 1 was amended to read as follows; section 20 was repealed; balance of act consolidated in Prison Law, Article 9.

L. 1886, Ch. 432. Provides for appointment of prison labor commission, whose term of office expires June, 1887. Temporary and obsolete.

L. 1887, Ch. 213. Consolidated in Prison Law as Article 10.

L. 1887, Ch. 711, §§ 1-6, 8-19. Sections 1–6, 8, 10–19 were repealed by L. 1900, Ch. 378, § 27. Section 9 except part relat-

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ing to power of court to fix or limit duration of term, consolidated in Prison Law, § 307. The remainder of § 9 is consolidated in Penal Law, § 2195.

L. 1889, Ch. 36, § 1. Consolidated in Prison Law, § 120.

L. 1889, Ch. 382, §§ 1, 3. Statute amends R. S., Pt. 4, Ch. 3, Tit. 2, §§ 29–115; so much as amends §§ 64, 94 was repealed by L. 1893, Ch. 692, § 1; so much as amends R. S., Pt. 4, Ch. 3, Tit. 2, §§ 30, 34, 45, 57, 64, 65, 67, 74–76, 79, 80, 82, 94, 97–109, 112, 114 and § 3 were amended to read as follows; balance of § 1 consolidated in Prison Law, §§ 11, 19, 70, 71, 74, 111–113, 115–124, 126–136, 138–156, 187, 188, 190, 192, 193, 213, 214, 217, 219, 323.

L. 1889, Ch. 401. Care of property of persons confined for life. Consolidated in Prison Law, Article 14.

L. 1890, Ch. 559. Consolidated in Prison Law, § 193.

L. 1892, Ch. 336. Authorizes appointment of commissioners to secure site for Eastern New York reformatory. Temporary and obsolete.

L. 1892, Ch. 396. Consolidated in Prison Law, § 20.

L. 1892, Ch. 587, §§ 2, 3. Section 2 provides for returns made by superintendents of Syracuse and Albany penitentiaries. Superseded by L. 1895, Ch. 372, § 2. Obsolete. Section 3 states when act shall take effect.

L. 1893, Ch. 306. Section 11 superseded by L. 1904, Ch. 547; balance of act consolidated in Prison Law, Article 5.

L. 1893, Ch. 386. Appropriates moneys to Auburn prison and provides for sale of goods damaged by fire or water in prison. Obsolete. See Constitution, Art. 3, § 29.

L. 1894, Ch. 266. Sections 1–4 are consolidated in Prison Law, § 179. Section 5 is a repealing section and section 6 states when act shall take effect.

L. 1894, Ch. 299. Authorizes appointment of commissioners for building Eastern New York reformatory. Superseded by L. 1900, Ch. 348. Obsolete.

L. 1894, Ch. 465. Consolidated in Prison Law, § 10.

L. 1894, Ch. 664. Section 1 consolidated in Prison Law, § 180. Section 2 provides for renumbering sections 5 and 6 of L. 1894, Ch. 266. Obsolete.

L. 1894, Ch. 737. Provides for manufacture of brooms by prison labor. Superseded by L. 1896, Ch. 429. Obsolete.

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L. 1895, Ch. 372. Relates to the confinement of convicts in penitentiaries. See note to L. 1875, Ch. 571.

L. 1895, Ch. 812. Appropriates moneys and appoints additional commissioners for building Eastern New York reformatory. Temporary and obsolete.

L. 1896, Ch. 429. Consolidated in Prison Law, §§ 158, 170–175, 177, 178, 181, 183, 185, 186, 189, 191.

L. 1898, Ch. 133. Authorizes employment of convicts in Clinton prison on highways. L. 1894, Ch. 266, covers the provisions of statute cited and being a more comprehensive statute was consolidated in Prison Law, § 179.

L. 1898, Ch. 645. Consolidated in Prison Law, § 176.

L. 1900, Ch. 72. Consolidated in Prison Law, § 125.

L. 1900, Ch. 378. Sections 1, 4, 16, amended to read as follows, and §§ 2, 5, were superseded by L. 1906, Ch. 684. Sections 3, 6–10, 15, 17–26 are consolidated in Prison Law, §§ 284, 287, 291–295, 297–307 respectively. Sections 11–14 are repealed as appears in schedule.

L. 1900, Ch. 498. Section 2 was amended to read as follows; balance of act consolidated in Prison Law, § 21.

L. 1901, Ch. 12. Sections 1, 2 were expressly repealed by L. 1907, Ch. 381, § 16. Section 3 is a saving clause and § 4 provides when act shall take effect.

L. 1901, Ch. 193. Relates to Elmira Reformatory. Superseded by L. 1906, Ch. 684.

L. 1901, Ch. 260. Section 1 was amended to read as follows as appears in schedule; balance of act confirms act of 1886, Ch. 21, relating to commutation of sentence. Inoperative.

L. 1902, Ch. 500. Section 2 amended "so as to read as follows." Remainder consolidated in Prison Law §§ 211, 215, 216, 218.

L. 1903, Ch. 137. Consolidated in Prison Law, § 230.

L. 1903, Ch. 138. Consolidated in Prison Law, § 296.

L. 1903, Ch. 447. Consolidated in Prison Law, §§ 137, 182, 184.

L. 1904, Ch. 323. Consolidated in Prison Law, § 72.

L. 1904, Ch. 425. Relates to transfer of prisoners from state prisons to Eastern New York Reformatory and also from there to the several state prisons. The entire matter is now provided for

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in L. 1906, Ch. 684, which has been consolidated in the proposed Prison Law.

L. 1904, Ch. 547. Consolidated in Prison Law, § 98.

L. 1904, Ch. 709. Consolidated in Prison Law, §§ 111, 114.

L. 1905, Ch. 536. Consolidated in Prison Law, § 21.

L. 1906, Ch. 684. Consolidated in Prison Law, §§ 280–283, 285, 286, 288–290.

L. 1907, Ch. 381. Sections 1–14 consolidated in Prison Law, Article 3. Section 15 is temporary and all statutes repealed by section 16 have been placed in the schedule of repeals to this chapter.

L. 1907, Ch. 467. Consolidated in Prison Law, §§ 210, 212.

Code Civil Procedure. Consolidated in Prison Law as follows:

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113	in 340	135	in 351
114	in 341	136	in 352
115	in 342	137	in 353
116	in 343	143	in 354
117	in 344	144	in 356
122	in 347	145	in 357
123	in 345	146	in 358
124	in 346	147	in 359
126 pt.	in 348	148	in 360
127 pt.	in 355	176	in 361
128	in 349	2219–2230	in 390–401
129	in 350		

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